JOURNAL

OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY

BY

JOHN MACDONELL, Esq., C.B., LL.D.,

AND

EDWARD MANSON, Esq.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῇ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

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PREFACE.

THIS number is the first of a new series of the JOURNAL OF COMPARATIVE LEGISLATION.

The Journal will be published by Mr. John Murray, of Albemarle Street, and will, it is hoped, appear at regular intervals.

It may be opportune to call attention to the following statement, which was published when the Society was founded:—

"The objects of this Society are both practical and scientific. The Society is intended to be of service to legislative bodies, practising lawyers, jurists, and students of sociology.

"To jurisprudence the Society will apply the comparative method of investigation, which has already proved fruitful. It will gather together, epitomise, and arrange materials now scattered through many periodicals, or to be found only in official documents of which few libraries contain copies, and it will otherwise endeavour to promote the study of comparative law. Chief among its aims will be the collecting of information as to the statute law and the forms and methods of legislation in the British Empire and the United States.

"In France, Germany, and America similar associations exist; and it has long been matter of surprise that no such society has been formed in the British Empire, with its great variety of legal systems. In India, where English, Hindoo, and Mahommedan law coexist, and have affected each other, and where ancient customs of interest to the legal historian are still observed, and in our colonies, dependencies, and possessions, in which French, Roman-Dutch, and Spanish law subsist, will be found a vast field for the work of a Society of Comparative Legislation. In extent and variety the jurisdiction of the Judicial Committee of the Privy Council, as a Court of Appeal, is unequalled. In a single year it may be called upon to consider questions of constitutional law of moment to all civilised countries, cases dependent on Hindoo or Mahommedan law, on texts of the Digest, on the Ordonnances of Louis XIV., on the Coutume de Paris, or other portions of the old customary law of France before the Revolution, or on

the ancient customs of Normandy. It is somewhat remarkable that there should not have long ago been founded a society for the scientific study and comparison of the very diverse laws brought before the Appellate Court of the colonies and possessions of the British Empire.

"Benefits, direct and indirect, from the labours of the Society may be counted upon.

"In the British Empire are some sixty legislatures; in the United States are nearly fifty. Each of them is occupied with much the same problems. The same questions as to criminal law and the administration of justice, capital and labour, marriage and divorce, patents and literary property, the regulation of the sale of intoxicating liquors, education, railways, companies, bankruptcy, merchant shipping, and mercantile law generally, come from time to time before the British and Colonial Parliaments and the legislatures of the states of the American Union. Experiments as to similar subjects are being made by more than a hundred legislatures in English-speaking countries.

"It is not uncommon, on the introduction of measures into Parliament, to refer to the laws of other countries. At present the results of foreign experiments are only imperfectly and casually brought to the notice of those who might profit by them; and enactments may be proposed and adopted in one English-speaking community in ignorance of the fact that similar measures have after trial been abandoned or modified in another. Much, it is conceived, might be learned with advantage both as to the substance and as to the form of legislation, and many mistakes might be avoided, if precedents derived from the experience of other countries were collected and studied. In the future changes in criminal law, for example, it would be advantageous to have some acquaintance with the provisions of the criminal codes passed after careful discussion in Germany, Holland, Italy, and Hungary. Impressed by the advantage of ascertaining systematically the course of foreign legislation, the late M. Dufaure established, in connection with the French Ministry of Justice, the *Comité de Législation Etrangère*, the duty of which was to collect and arrange information as to foreign laws. M. Dufaure's action has, it is believed, been justified by the results. It is hoped that the Society of Comparative Legislation may render services of a similar kind, and may be the means of enabling governments and legislatures to profit by useful precedents.

"English-speaking races show a tendency towards unity in law. Our colonies borrow the principle and form of many statutes from England. The United Kingdom also borrows from the colonies. Among the colonies themselves there is a like movement, and the same interchange goes on between the United Kingdom and her colonies and the United States. No fewer than thirty-six states of the American Union, it is alleged, have adopted the Australian ballot system. The Torrens system of land transfer, which had its origin in South Australia, and the provisions of which were to some

extent founded on the register of British ships, has been adopted in many of our colonies. One law as to bills of exchange may be said to exist throughout the Colonial Empire. A similar statute is in force in India. Several of our colonies have adopted a bankruptcy law borrowed from the English statutes of 1861, 1869, and 1883.

"The open and avowed adoption of statutes gives no complete idea of the extent of assimilation. Underneath differences of phraseology will be found a tendency to approximation even in colonies and possessions where the English common law never prevailed. The Roman-Dutch law, for example, in both South Africa and Ceylon, has been modified by the introduction of elements borrowed from English statute and common law.

"Very often the local differences are unimportant and accidental. In the United States are some forty-seven different systems for conducting civil litigation. But for the most part they are based on the New York Code, the English Common Law Procedure Acts, and the Judicature Acts. 'While nearly every one of these divers systems is founded upon one or the other of two models, and conforms to its model in all substantial particulars, probably no two of them are alike in every respect.' In some colonial statutes relating to procedure it is stated that 'unless it is otherwise provided,' the procedure shall be regulated by the practice in the superior courts in England.

"English mercantile law is already to a large extent the law of all English-speaking countries. On this subject the same rules are acted upon, the same decisions and text books are cited with respect, in all courts of the British Empire and in the United States. The statutory modifications of the *Lex mercatoria* here and elsewhere are similar. The Indian Contract Act, embracing sale of goods, indemnity and guarantee, bailment, agency and partnership, is framed upon English decisions and statutes. Our colonies and several states of the American Union have passed similar statutes altering the common law to meet the necessities of modern commerce. The Factors and the Companies Acts are cases in point; they are reproduced, generally with slight modifications, in colonial legislation. In the Cape Colony, where Roman-Dutch law is the basis, the legislature has, by a single Act, incorporated a large part of the commercial law of England (Act 8, 1879). There is still, however, much diversity in the law relating to bankruptcy. In some parts of the British Empire no bankruptcy law proper exists. In the interest of commerce few legal reforms could be more beneficial than the adjustment and determination of rights in bankruptcy and the administration of bankrupt estates throughout the Empire according to the same principles.

"There was a time when it seemed that Roman law might become the law of the world. In the early part of this century the tendency in countries engaged in codifying their law was to take the Code Civil of France as a model. This is no longer the case. In recent times the tendency, especially

as to commercial legislation, is to approximate to English law. It has spread almost as widely as the English language or literature.

"In accordance with a plan which has proved successful in the case of the American Bar Association and the *Institut de Droit International*, standing committees, entrusted with separate parts of the work of the Society, have been formed. The number and nature of the committees will depend upon the assistance which the Society receives. But the intention is to begin with only a few important subjects.

"One of the committees already formed is a Statute Law Committee. In furtherance of its work communications have been addressed to the governments of British colonies and dependencies, with a view to obtain information as to the existing condition of statute law, and in particular as to the following points :—

I. The form of statute and written law.
II Modes of preparing and passing bills.
III. Revision and amendment of statutes.
IV. Form and manner of publication and numbering of statutes.
V. Measures taken to secure uniformity of language.
VI. Consolidation and codification.
VII. Indexing of statute law.

"One result of the labours of the Society may be, it is hoped, to bring about uniformity in regard to the form, numbering, and publication of statutes, as to which there is no great diversity. Efforts will be made to procure the preparation, on some uniform plan, of a satisfactory index of the statutes of each legislature; and perhaps it is not too much to hope that we may one day have a general index of the legislation of the British Empire. Mr. Stimson, in his Digest of the Laws of the States of the American Union, and the University of New York, in its Library 'Bulletin,' have shown what may be done within a moderate compass. Prepared not solely for the use of the lawyer, such an index as is here suggested might be of use to the statesman and student of sociology.

"It may be expedient in the first instance to deal chiefly with statute law. This will not, however, be the sole work of the Society. As the Lord Chief Justice (Lord Russell of Killowen) pointed out at the first conference, the statute law of a country cannot be understood without reference to the common law on which it is based, and which it was intended to correct.

"The services of those who are interested in different parts of comparative jurisprudence will be made use of. In India alone, which is at once, to cite Sir Henry Maine's language, 'the great repository of verifiable phenomena of ancient usage and ancient juridical thought,' and the scene of some of the most interesting modern experiments in legislation, is a limitless field for work such as the Society seeks to promote. There

ancient and modern codes coexist. In customs and usages still observed are legal conceptions of which in the Western world are only obscure traces; and the meeting of several diverse systems of law has given rise to problems akin to those which in the decline of the Roman Empire arose from the contact of its law with the customs and laws of other states.

"Here it may be pointed out that in no modern book is there an adequate treatment of the systems of law in force in the British Empire. The first and only edition of Burge's *Commentaries on Colonial and Foreign Laws* is dated 1838.

"Little can be done without co-operation in all parts of the Empire. It is intended to establish branches in the different colonies and possessions. From these branches valuable suggestions may be expected. With them, in great measure, must rest the success of the undertaking. It is desired to enlist the aid in particular of the Governors, Chief Justices, and Judges of our colonies, of Chambers of Commerce throughout the Empire, of the Inns of Court and Incorporated Law Societies, of the Universities, of the Diplomatic and Consular Services, and of the Bar Associations and Statute Revision Commissions in the United States.

"Probably the work of the Society would be advanced by holding from time to time conferences. In Germany, Italy, Austria, and Switzerland representative meetings of lawyers and jurists annually take place. At these meetings are discussed questions of interest to the legal profession and the public. It is no disrespect to existing associations to say that hitherto no meetings, with the objects here indicated, have taken place in England or in any part of the British Empire; and it is believed that the utility of the new Society would be recognised, its objects would be shown to be not merely academic but practical, if conferences were periodically held for discussion of legal matters affecting the whole Empire."

Since the above statement was published the need of such a Society and of a Journal recording its transactions has become more than ever manifest. The activity of the many legislatures above referred to has grown in a striking manner, and has extended itself to new fields.

No less striking is what may be called the synchronism of legislation throughout the Empire and in most foreign countries. The parliaments of the world are considering the same questions; measures with like objects are being introduced into all the chief legislative bodies; and each statute or ordinance is instructive to all countries about to make similar experiments.

With such a wide field before it, the work of the Society cannot be properly carried on without assistance from many countries, and corresponding members are invited to co-operate with suggestions or contributions.

The Journal of the Society, it should be understood, is not intended to enter in any way into rivalry with existing legal periodicals; its province is distinct; and their assistance is confidently relied upon.

The annual subscription to the Society is £1 1*s.*, payable to the Society's Bankers, Messrs. Child & Co., 1, Fleet Street, E.C., or to the Honorary Secretary. A donation of £10 10*s.* entitles a subscriber to the privileges of life membership.

London, *December* 1898.

All communications relating to the Society, or the Journal thereof, should be addressed to the Honorary Secretary,

Edward Manson, Esq.,
8, Old Square, Lincoln's Inn,
London, W.C.

INTRODUCTION

TO THE

REVIEW OF THE LEGISLATION OF THE EMPIRE.

By Sir Courtenay Ilbert, K.C.S.I.

The Legislation of the Empire for 1897 shows no signs of diminution either in quantity or in variety. The rapid development of social and industrial life in British Columbia has produced a correspondingly rapid outburst of administrative legislation to meet the various and growing needs of the community. And there is evidence in other parts of the Empire that activity in legislation may be, and frequently is, a symptom of vitality, and not, as the pessimist historian maintained, of decay. At the same time our colonial legislatures have not forgotten that, unless additions to the Statute Book are accompanied by pruning and rearrangement of the existing statute law, the result is bewildering chaos. British Columbia has made provision for the revision and consolidation of the law of the province, including the statute law of England locally in force. Ontario has brought into operation a set of Revised Statutes. And important Consolidation Acts figure on the record of this year's legislation in a large number of the colonies. Some of the colonies have gone further, and have attempted the more ambitious task of codification. Thus the little island of Grenada may congratulate herself on having passed in a single session an Evidence Code, with illustrations after the Anglo-Indian fashion, a Criminal Code, and a Code of Criminal Procedure. This care for the form, as distinguished from the substance, of the law supplies a lesson which might well be taken to heart by the Parliament at Westminster, where codification has long been treated as an idle dream, and where the more modest, but more urgent, task of consolidation has during the last few years been laid aside.

Constitutional and Fiscal Legislation.—The constitutional legislation of 1897 presents no features of special interest. Australasian federation made no progress. Indeed, New South Wales took a step backwards by increasing the number of votes required for adhesion to the Federal Constitution.

Nor is there much to notice in fiscal legislation. As an exception from the normal jealousy of foreign products may be noted the Ceylon Ordinance for encouraging the importation of frozen meat.

Criminal Legislation.—Criminal legislation often throws an instructive light on the special forms of evil with which different communities have to contend. South Australia has passed a comprehensive law against betting and gambling, with provisions for regulating the use of the "totalizator"; while Bengal has found it necessary to legislate specially against betting on drops of rain. Hongkong has been trying to put down the odious traffic in women and girls. West Africa, as usual, brings us into the presence of strange forms of crime. The object of a Sierra Leone Ordinance of 1897 was to safeguard traders as well from threats of actual violence as from the subtle and more malign influence of fetish. An offence is committed by "any person who, by having recourse to any kind of *Poro* laws or customs, native fetish, trickery or device whatsoever, intimidates, hinders, or interrupts any person from gathering, buying, selling or otherwise disposing of his produce." Thus the secular sanction of the state is pitted against the supernatural sanction brought in aid of local forms of boycotting and picketing.

It may be noted that Gambia anticipated by a year the Parliament at Westminster in allowing accused persons to give evidence.

Immigration.—Immigration is still a burning question. Natal and West Australia have both passed Acts to prohibit the immigration of any person who cannot write out in a European language an application drawn up in a scheduled form for leave to land, as well as of paupers, lunatics, persons suffering from contagious diseases, and criminals. The first test is of course intended as an indirect mode of excluding coloured immigrants. Jamaica has imposed similar restrictions on immigrants. West Australia has dealt more directly with coloured immigrants belonging to certain nationalities by imposing restrictions on their numbers and on the area into which they may be imported. On the other hand, the Straits Settlements have legislated for the protection of imported coolies, and Jamaica for their repatriation. And Ontario and Manitoba have regulated the operations of societies bringing children into those colonies.

Native Labour.—Not unconnected with the laws regulating and restricting coloured immigrants are the laws passed for the protection of natives, and for the regulation of native labour, and of dealings with natives. Queensland has passed an Act for the protection of "aboriginals"—*i.e.*, black natives and half-castes living with them. It provides for the creation of native reserves, and the removal to them of all aboriginals not absent under a permit or lawfully employed under the colonial laws. Unauthorised persons are excluded from the reserve, and the aboriginals are not allowed to buy liquor or opium, or to sell the blankets supplied to them by the Government. Western Australia has placed the care of the native population, including their education, under the charge of a department with a responsible minister. New Zealand, dealing with a higher class, has regulated the borrowing by Maoris for the improvement of their lands. New Guinea has placed its natives under a strict labour code. The legislature for the Western Pacific

has regulated the recruiting of natives in the British Solomon Islands. Protectorates are, as Mr. Albert Gray observes, regions in which the touch of civilisation has to be cautiously applied to matters barbaric, and the Protectorate Ordinance passed by Sierra Leone in 1897 contains much curious and interesting matter. It establishes three classes of Protectorate courts: the Court of the Native Chiefs, the Court of the District Commissioner and Native Chiefs, and the Court of the District Commissioner alone. It assigns to the first class all civil cases between natives, and criminal cases, subject to important exceptions, which include the more serious crimes, such as witchcraft, slave-raiding, cannibalism, and the operations of the Human Leopard and Alligator Societies. Counsel and attorney cannot appear in the Protectorate courts except by leave of the District Commissioner. Another part of the Ordinance deals with slavery, by declaring slave-dealing to be unlawful, declaring all slaves brought within the Protectorate to be free, and providing for the enfranchisement of existing slaves. A further part of the Ordinance imposed a native house-tax, of which a good deal has been heard since.

Other Labour Legislation.—In labour legislation by far the most important enactment of the year was the Workmen's Compensation Act of 1897, which dealt on novel lines with a question of long standing between employers and workmen. It is interesting to find that New South Wales was in the same year consolidating the Acts which it had passed on the older lines, and extending them to certain classes of seamen. Western Australia has required the registration of employment brokers. Victoria has required all servants' registry offices to be licensed. New Zealand prohibits all Sunday labour in mines. Western Australia has given workmen employed by a contractor a lien for their wages on money due to the contractor. British Columbia has limited the duration of contracts of service to a maximum of nine years. It has also prohibited the employment of Chinese and Japanese on certain classes of works.

Sanitary Legislation.—In sanitary legislation India, for melancholy reasons, takes a prominent part. The Epidemic Diseases Act, 1897, is, as its name denotes, a plague measure, and contains stringent provision for dealing with outbreaks of any dangerous epidemic disease. Ceylon, by an ordinance of the same year, gave powers for preventing the introduction and spread of the plague. The Straits Settlements are still concerned with lepers, and have imposed sanitary regulations on ships carrying Mahommedan pilgrims to the Hedjaz. The legislature of the Western Pacific has taken precautions against the introduction of contagious diseases into the British Solomon Islands, and the Cape has passed a comprehensive law of public health.

Education Legislation.—The educational legislation of the British Parliament for 1897 will be remembered by the Act of that year for the encouragement of "voluntary" schools. A New Zealand Act of the same

year illustrates the difficulties which attend well-meant legislation for improving the position of public teachers. An Act of 1895 had endeavoured to secure teachers against arbitrary dismissal by school boards. An Act of 1897 enacts that a dismissal of a teacher is not to be deemed wrongful, if reasonable, having regard to (1) the efficient and economical administration of the Board's affairs, (2) the conduct or fitness of the teacher, and (3) any special circumstances. The Province of Quebec in 1897 empowered its Lieutenant-Governor to set aside 1,500,000 acres of land for purposes of elementary education.

Agriculture.—Tasmania has established a Council of Agriculture. British Columbia has authorised the formation of farmers' institutes, which may receive pecuniary aid from the Government. Its Minister of Agriculture is also empowered to authorise co-operative undertakings, such as a Farmers' Exchange, Cheese Factory, Creamery, and the like. New Brunswick, in the interests of agriculture, authorises aid to be given to persons erecting mills for the grinding of wheat by the Hungarian or other rolling process, and empowers the Commissioner of Agriculture to purchase wheat and other seeds, and place them on sale at convenient prices.

Private Land.—Legislation within the domain of private land is, as usual, comparatively scanty.

The important Land Transfer Act of the British Parliament has altered the real property law of England by vesting real property on death in a "real representative," and has made provision for the gradual introduction of a system of compulsory registration of titles to land.

The Land Acquisition Act of Jamaica, which perhaps belongs rather to the branch of administrative law, supplies an illustration of colonial modes of dealing with the compulsory acquisition of private land for public purposes. It is interesting to find that bills of sale have given employment to the legislature responsible for the condition of Samoa, and the Gilbert, Ellice, and Solomon Islands.

Other Points: "Omnibus Bills."—A few odds and ends may be noticed in conclusion. "Omnibus Bills" have been discouraged in England. But for variety of topics it would be difficult to beat c. 14 of the Statutes of Ontario for 1897. The Dominion of Canada appears to apprehend a plethora of Queen's Counsel, and two of its provinces have passed laws for limiting their number. British Honduras has legislated for the protection of its ancient monuments, which include anything in existence before 1700. Newfoundland has granted a close time for beavers. Both the Isle of Man and New Brunswick have authorised the expenditure of public money on advertising their attractions for tourists. The money devoted in the Isle of Man to this purpose is to be raised as part of the lunatic asylum rate.

LEGISLATIVE METHODS IN THE ZANZIBAR AND EAST AFRICA PROTECTORATES.

[*Contributed by* Sir Arthur H. Hardinge, K.C.M.G., C.B.]

Before describing these methods, which are at present very simple and autocratic, it may be as well to give a brief sketch of the territories which constitute the two protectorates and of the outlines of their government.

The Zanzibar Protectorate consists of the two islands of Zanzibar and Pemba, and is governed by the Arab Sultan of Zanzibar and a ministry largely European, the European members of which can only be removed by the Sultan, with the consent of the British Political Agent and Consul-General, as representing the protecting Power. The British agent is, moreover, the channel of communication between the Zanzibar Government and foreign powers, and manages, under the supervision and direction of the British Foreign Office, the foreign relations of the Sultanate. Zanzibar therefore bears a close resemblance to one of the feudatory states of British India.

The British East Africa Protectorate, on the other hand, consisting of the territories on the mainland of Africa, bounded on the east by the Indian Ocean, on the west by the Uganda Protectorate, on the south-west by the Colony of German East Africa, and on the north and north-east by the Italian sphere of influence and Abyssinia, is directly administered by the British Foreign Office through a Commissioner and Consul-General, who is at the same time Political Agent at Zanzibar.

The East Africa Protectorate includes three distinct sovereignties:

(1) The mainland territories of the Sultan of Zanzibar.

(2) The Sultanate of Witu.

(3) The remainder of the Protectorate, consisting of the old "chartered territory" of the late Imperial British East Africa Company and of the region between the rivers Tana and Tuba, not included either in Zanzibar or Witu. This division, which for the sake of convenience may be styled "British East Africa proper," is not, of course, technically under Her Majesty's sovereignty, and is divided among a number of tribes and races, over whom we exercise authority; but it differs from Zanzibar and Witu in that the status of the chiefs

of these tribes is not recognised by international law, or at least by any international agreement.

(1) **Zanzibar.**—The mainland dominions of the Sultan of Zanzibar included in the East Africa Protectorate (for he possesses certain coast forts by the road it now leaves to Italy) consist (1) of a strip of coast ten miles deep from high-water mark, extending from the mouth of the River Umba on the south to Kipini on the Ozi on the north; and (2) of a series of islands off the coast between the Ozi and the Tuba, and of the mainland town of Kismayo, with a radius of ten miles around it.

These territories were recognised as constituting the mainland dominions of the Sultan by the Anglo-German Agreement of October 31st, 1886, to which France subsequently became a party, and were leased by successive sultans under successive concessions granted in 1887, 1888, and 1890, to the Imperial British East Africa Company, which surrendered them in 1895 to the late Sultan Hamed bin Thwain in return for the sum of £200,000, representing the purchase money paid in 1890 by the German Government for the Sultan's sovereign rights in the former Zanzibar possessions between the Umba and Rovuma rivers, now included in German East Africa. By an Agreement made verbally in July 1895, but not formally signed till December 1895, between His late Highness and myself as Her Majesty's representative, these territories were to be administered under his sovereignty and flag by officers to be appointed by Her Majesty's Government, which undertook in return to pay to that of Zanzibar the annual sum of £17,000 a year, representing the old rent of the Imperial British East Africa Company, (£11,000), and the interest (£6000) on the above-mentioned sum of £200,000 at three per cent.

(2) **Witu.**—The State of Witu extends along the coast from Kipini to Kwyhoo, its northern boundary being a straight line drawn in 1887 by Commissioners representing the German and Zanzibar Governments due west from Kwyhoo to a point a few miles east of the Ozi river. It was founded, or rather gradually grew up, in the years from 1860 to 1885, round a colony of outlaws who had followed Ahmed bin Fumo Luti, the last of the old Nabhan sultans of Pattah,—a race dating from the earliest days of Asiatic colonisation in East Africa,—when, after he had been conquered, together with his ally Mahommed bin Mataka, tyrant of Siu, by Seyyid Niagid, Sultan of Zanzibar, he withdrew first to Kipini, then to Kan on the Ozi, and finally, being driven from Kan by Seyyid Bargash, took refuge in the forests of the district now known as Witu. From this last refuge, where he had collected round himself all the criminals, runaway slaves, and outlaws from justice of every description, Seyyid Bargash strove in vain to dislodge him, and under the name of "Simba" (the "lion"), by which he was known to the Swahilis, he attained, notwithstanding all the efforts of the Government of Zanzibar, the position of a powerful and practically independent petty chief.

When the German Government first interested itself, about a decade ago, in East African affairs, it recognised the little colony of outlaws and refugees from the coast towns which had grown up in Witu as an independent state, and Ahmed or "Simba" himself—who accepted a German Protectorate—as the legitimate sovereign of the land. Accordingly, on transferring this Protectorate, by the Treaty of 1890, to Great Britain, it stipulated by Article II. of that agreement that the sovereignty of the Sultan of Witu over the territory formally defined as his in 1887, should be recognised by the new protecting Power. Events for some time made it difficult for Great Britain to carry out the letter of this engagement, for Fumo Bakari, who had succeeded Ahmed in 1887, fell out with the Germans. A number of German traders and settlers were murdered by his order or connivance, and an expedition was despatched in 1890, at the request of the German Government, to chastise him. His capital was taken and his dynasty overthrown, but his followers continued an intermittent guerilla warfare for some years longer, and the country was only finally pacified in 1894 by the forces of the Sultan of Zanzibar, who undertook as a provisional arrangement to carry on its administration for Her Majesty's Government. The establishment of the East Africa Protectorate in 1895 afforded a favourable opportunity for regularising the position of Witu in accordance with the provisions of the Anglo-German Agreement, and the sovereignty of the deposed Nabhan dynasty (now represented by Bwana Sheh, a half-witted brother of Fumo Bakari) was revived in the person of Omar Bin Mohammed, the former commander of the Witu army under the old sultans, who had acted as Wali or Governor of Witu under the Zanzibar Administration. A British officer, under the control of Her Majesty's Commissioner for East Africa, is accredited to the Sultan of Witu as Resident.

(3) **British East Africa Proper.**—Beyond the Zanzibar and Witu limits the territories comprised in the Protectorate are ruled directly under Her Majesty by the British officers in charge of them. All the various tribes, Mahommedan and heathen, retain, however, their respective native rulers and institutions. Among the Mahommedan tribes, Somalis, Wagosha, etc., the power of the chiefs, whether called sultans or sheikhs, is more developed than among the heathen ones, whose organisation is very loose and primitive. Roughly speaking, there may be said to be about from twenty to twenty-five distinct tribes known to us (including slave or helot tribes of nomad hunters, such as the Waboni), both heathen and Mahommedan, in the Protectorate. The majority of these are in British East Africa proper, but a few overlap into Zanzibar and Witu territory, and are mixed with the Swahili population which forms the bulk of the inhabitants of both sultanates.

The Treaty Powers.—The sketch of the political limits and institutions of the two protectorates will render a description of their legislative methods more intelligible. It should, however, be premised that in the Zanzibar dominions, both in the islands and on the mainland, subjects of Great

Britain and of certain foreign powers having treaties with the Sultanate, almost all of them anterior to the establishment of the British Protectorate, enjoy what are called "ex-territorial rights," and can only be sued or prosecuted in their own courts. The Treaty Powers are therefore in relation to their own subjects co-ordinate legislative authorities with the Sultan in the islands and with the British Administration in certain parts of the mainland. As a matter of fact the only one of them which legislates is the protecting Power, Great Britain, the others contenting themselves with enforcing upon their respective subjects, through their consular courts, the existing laws of their own countries, and occasionally applying to them, at the request of the British Government, some new law, ordinance, or regulation which the territorial authority may have enacted. Now, however, that the British Government, by the Zanzibar and East Africa Orders in Council, 1897, has abolished its consular courts and substituted for them regular British tribunals independent of its Consulate-General, it is hoped that the Treaty Powers will surrender their consular jurisdiction and the ex-territorial rights of their subjects, and will be content to permit the latter to be dealt with like British subjects, as "persons subject to the Orders in Council."

Powers of Sultan.—The legislative authority in the Zanzibar Protectorate over all persons not subjects of Treaty Powers resides in the Sultan, who is, like most Mahommedan sovereigns, an absolute prince, but is nevertheless bound, by what may be called a principle of the common law, to govern according to the precepts of the Mahommedan religion. A serious violation of this rule, if declared by the majority of the doctors of the law to have been committed, would theoretically justify a withdrawal by his Mahommedan subjects of their allegiance: it will be remembered that it was such a declaration or "Fetiva" by the Sheikh al Islam which legalised the deposition, in 1876, of the Turkish Sultan Abdul Aziz. In practice many of the enactments made in modern times under British pressure by the sultans of Zanzibar are in flat contradiction to the law of Islam, and are nevertheless held to be constitutionally valid by the Mahommedan courts. The difficulty is got over by the fiction, derived from the doctrine of "Takiah" or "legitimate dissimulation," that when a strong foreign Power forces a weak Mahommedan ruler to commit an act which is, strictly speaking, illegal, it is lawful for him to commit it, provided he condemns and abhors it internally or, as the casuists would say, *in foro conscientiæ*, and only does it because his refusal would or might entail even greater calamities on the faithful. Thus an enactment in itself illegal becomes legal and binding on the subjects, if held by the doctors of the Mohammedan law to come within this category; and they themselves have no scruple about applying it. It is in virtue of this fiction that the sultans, both here and also in Turkey, have been able to reconcile the prohibition of the slave trade, the abolition of the status of slavery, the admission of infidel

evidence in courts of justice, the cession of Moslem territory to infidels, the abrogation of the *lex talionis* and of the death penalty for apostasy from Islam and adultery, besides many other things of the same kind, with a theoretically rigid adhesion to the Mahommedan law; and that in India and Asiatic Russia the doctors have declared it to be the duty of the faithful to submit cheerfully to the orders of an infidel Government so long as they are not strong enough to overthrow it.

Promulgation of Native Statute Law.—The Sultan's enactments, which constitute the native statute law of Zanzibar, as the Sheria of Islam, embodied in a vast mass of traditions, commentaries, and records of judgments, constituted its common law, are usually made in the form of a proclamation addressed "to all Our friends" (or subjects), and beginning, "Be it known unto you that We have ordered" such and such things, and are signed by the Sultan, sometimes with his simple signature, sometimes, especially in the case of the older sultans, with some say depreciatory expression such as "this is written" (or ordered) "by the beggar in the sight of God, the poor Bargash bin Said." Later on, as they have been drafted by European officials they have become more precise, and important ones usually have a preamble and several sections or articles. I append (1) a specimen of the older and (2) of the newer kind of proclamation, the one anterior, the other subsequent, to the British Protectorate.

Since the establishment of the Protectorate and the institution of an European Administration, enactments having the force of law have been made by the Sultan's Prime Minister, in the Sultan's name, and acting on his behalf, but without His Highness' signature. These enactments are submitted to and approved by him, and are said to be made by His Highness' Government. They are not like the Sultan's own proclamations, called "Decrees," but "Ordinances" or "Regulations," and deal rather with the subordinate details of administration than with what may be termed important legal or constitutional questions. Where they affect foreign relations or are made under the general Act of the Brussels Conference, which has become by the adhesion of the Sultan part both of the internal law and of the international obligations of Zanzibar, they are countersigned by the British Agent, under authority from Her Majesty's Secretary of State for Foreign Affairs. It has also become customary since the establishment of the Protectorate, particularly under the two last sultans, for the decrees of sultans to be countersigned by the English Prime Minister; but this practice rests upon recent usage and not upon any positive law, nor would the omission of the Prime Minister's signature suffice to render a decree of the Sultan invalid. I append a specimen of regulations made by His Highness' Government.

Another mode by which the sultans used to legislate was by instructions addressed to their ministers or provincial governors in the form of a letter or despatch. Thus Seyyid Khalifa bin Said made a most important change

in the Mahommedan law, which holds in its strictness that no lapse of time can bar a claim of right, by merely ordering the Arab Governor of Mombasa in a short official note (see Appendix) to hear no claim which had been allowed to lie dormant for twelve years. I do not know why he did this: it was before our Protectorate, and the change was not imposed upon him by external pressure, but in spite of the fact that in the teeth of the Sheria he enacted a statute of limitation. The native judiciary raised no opposition, and as we found this modification of the Mahommedan law in force when we took charge of the country, we have always acted upon it, though it is still a matter of doubt, which the native courts may have sooner or later to decide, whether it applies to the whole of the Sultan's mainland dominions or only to the district of Mombasa. This summary method of altering the law has, since the establishment of the Protectorate, fallen into disuse, but is still theoretically legal.

Legislative Authority of Queen in Council.—Her Majesty the Queen in Council, and under her the Secretary of State for Foreign Affairs within certain limitations, or any Secretary of State acting for him, and again under him the British Agent and Consul-General, are legislative authorities for the large British community, consisting chiefly of British Indians who are "persons subject to the Zanzibar Order in Council, 1897." Under s. 47 of that Order the Consul-General may make Queen's regulations for peace, order, and good government, or the enforcing of any existing law enacted by the Sultan, subject to the approval of the Secretary of State; and these regulations, together with the penalties prescribed by them, are legally binding on British subjects and other persons subject to the Order. The Secretary of State may apply to persons subject to the Order any English, African, Colonial, or Indian statute or section of a statute; for although the British courts in Zanzibar administer the Indian Penal Code and the Indian Criminal and Civil Procedure Codes, only a limited number of Indian Acts are actually enforced there. Lastly, the Queen herself may by Order in Council make any alteration she pleases in the law governing British subjects in Zanzibar.

Specimens of new regulations by the Consul-General, of the application by him of Zanzibar regulations,[1] and a copy of the Zanzibar Order in Council, 1897, which repeals all previous orders, are appended.

East Africa Protectorate.—Thoughout the East Africa Protectorate the supreme legislative authority resides in the Queen in Council, but a portion of it is delegated to the Secretary of State for Foreign Affairs (or any Secretary of State acting for him), and under the supervision and subject to the approval of the Secretary of State, to the Commissioner and Consul-General. The mode of legislating is therefore almost exactly similar to that in force in Zanzibar for British subjects, but the territory being larger and

[1] None have, I find, been applied at Zanzibar.

less civilised, and presenting wider problems than the small islands of Zanzibar and Pemba, legislative activity is much greater there than in the Zanzibar Protectorate.

I append (1) the East Africa Order in Council, (2) specimens of the application by the Secretary of State of an Indian Act, (3) regulations made by the Commissioner, and (4) regulations for the administration of justice by native courts, which explain the judicial system in force among the native population of the Protectorate. A person comparing these latter regulations with the Order in Council will probably notice a discrepancy in the important definition of a "native"; this circumstance, due to the fact that the regulations were drafted by me without the Order in Council before me, is now in process of being corrected.

Witu: Legislative Power.—In Witu, which is an autonomous sultanate, the legislative power in relation to natives resides in the Sultan, acting by the advice of the British Resident. There are no ex-territorial rights there, but the native Government in 1893 delegated its jurisdiction over all Europeans to the European "administrator" whose functions now vest in the "Resident," who again is under the orders of the Commissioner, so that for Europeans the legislative machinery is the same as the rest of the East Africa Protectorate. With respect to natives the practice is that any regulations made by the Commissioner for them in the other portions of the Protectorate are promulgated by the Sultan in his own name "by the advice" of the Resident in Witu. The law of Witu as regards natives is, except for a few trifling differences, almost exactly similar to that which prevails in the Zanzibar mainland dominions. The tendency in both protectorates is naturally, in all new enactments that are made, to render such additions to the law as similar as may be for Europeans and natives alike, in so far as this is possible in view of the difference in their history and their circumstances, and of the fact that on the coast and in the islands the law of the native is the Mahommedan Sheria, and that of the European and Indian the law (if one may use, speaking generally, so loose a term) of British India. We shall probably have to reform and codify the Sheria on some such lines as in Turkey and Egypt, and as time goes on endeavour, without needlessly arousing religious prejudices, to weld together the two systems. We shall also, I think, very soon indeed have to introduce into the Mahommedan courts in Zanzibar the Indian Procedure Rules. We have done so already on the mainland, except in the case of the Mahommedan Ecclesiastical Courts (Muhakim el Kudaa), which deal exclusively with matters of personal status, and the change is, I believe, rather popular than otherwise with the natives themselves.

"*Zanzibar Gazette*," *April 7th*, 1897.
(*TRANSLATION.*)

DECREE.

DATED 29th OF SHAWAL, 1314.

FROM SEYYID HAMOUD BIN MAHOMED BIN SAID TO ALL HIS SUBJECTS.

"Whereas it is expedient to make further provision for the good government of Our subjects in the interior of the Islands of Zanzibar and Pemba, We hereby enact as follows:—

"I. The Island of Zanzibar is divided into the three following districts (Wilayat), which shall supersede all previous existing administrative divisions:—

"1. The District of Kokotoni, bounded on the North-West and East by the sea, and on the South by a straight line which, starting from a point on the West Coast half a mile to the South of Nnanjale, shall run to a point on the East coast one mile to the North of the village of Pongwi.

"2. The District of Mwera, bounded to the North by the Southern boundary of the District of Kokotoni, on the South and West by the sea, and on the East by a line which, starting in a Northerly direction from Sungi Inlet, shall cross the high road from Zanzibar to Chwaka a quarter of a mile to the west of the village of Indijani, and shall run in a straight line to the North till it meets the Southern boundary of the District of Kokotoni.

"3. The District of Chwaka, bounded on the North by the Southern boundary of the District of Kokotoni, on the East, South, and South-west by the sea, and on the west by the Eastern boundary of the District of Mwera.

"Except where otherwise provided, all adjacent islands and inlets shall be held to belong to the District to whose coast they are in closest proximity.

"II. The City of Zanzibar, including Ngambo and the Islands in Zanzibar harbour, is excluded from the jurisdiction of the Wali of Mwera, whose powers shall be exercised within it by Our First Minister.

"III. We hereby place over each of the Districts above mentioned an Arab official who shall have the rank of Wali, and direct all Cadis, Akidas, Sheikhs, headmen, and other local authorities within the boundaries of the District assigned to him, to regard him as Our representative, and to exercise any powers now vested in them subject to his supervision and direction. All are to obey his orders.

"IV. The Walis shall form and constitute in each of their Districts a District Court of summary jurisdiction to be called the District Court, which shall henceforth be the chief court of the District, but from which an appeal shall always lie to Ourselves or to such Judge or public Authority as We may from time to time see fit to delegate.

"V. The powers of the present Walis in Chaki-Chaki and Weti in Our Island of Pemba shall be identical with those of the Walis hereby appointed over the Island of Zanzibar.

"VI. The following are appointed hereby Walis :—

"For the District of Kokotoni, to reside at Kokotoni, *Suleiman bin Hamid.* For the District of Mwera, to reside at Mwera Bridge, *Serhan bin Nasr.* For the District of Chwaka, to reside at Chwaka, *Hilal bin Mahomed.*

"Written by his order by his slave *Salim bin Mahomed.*

"(*Sd.*) HAMOUD BIN MAHOMED BIN SAID."

Proclamation abolishing Slavery in Kismayo, Brava (Merka), and Mogadishu.

(*TRANSLATION.*)

"IN THE NAME OF GOD THE MERCIFUL, THE COMPASSIONATE.

Seal of Bargash.

"FROM BARGASH BIN SACED :—

"To all who may see this of Our friends the inhabitants of Kismayo, Brava (Merka), Mogadishu and its dependencies, be it known, God having brought about the departure of the Egyptians from Our Dominions in Kismayo, that on re-establishing Our Government and Kingdom We have decreed the abolition of Slavery throughout Our Dominions in the Benadir and the District of Kismayo, and We have commanded Our Governors to see that this order is enforced, and that slaves are not permitted to pass through the territory above named.

"Written by Zahr with his hand this 17th day of El Haj 1292 (15th January 1876). This is from me written with his own hand.

"(*Sig.*) BARGASH BIN SACED."

PROCLAMATION.

"Whereas under the Zanzibar Order in Council, 1897, Section 47, Her Majesty's Agent and Consul-General has power to make regulations for the peace, order, and good government of British subjects and other persons

subject to the said order, it is hereby notified that the Consul-General has, in virtue of the power aforesaid, made the following regulations :—

"1. Every British subject or British protected person being the occupier of a house in the towns of Chaki-Chaki, Weti, and Jembangone in the Island of Pemba shall maintain a light over the front door of his house from sunset to sunrise.

"2. The owner or occupier of every such house shall also keep the street thoroughly clean and free from dirt and refuse of every kind opposite the whole frontage of his house.

"3. The police of His Highness the Sultan are charged with the execution of these regulations; and if any British subject or British protected person contravenes either of them, he shall, on conviction before a court of competent jurisdiction, be liable to be punished with a fine which may extend to one thousand rupees, or with imprisonment which may extend to two months, or both.

"4. The said regulations are hereby declared to be 'urgent,' and shall come into operation in Chaki-Chaki, Weti, and Jembangone respectively within seven days after their publication in each of these towns.

"(*Signed*) ARTHUR H. HARDINGE,

"*H.M. Agent and Consul-General.*"

THE STATUS OF ENGLISH TRADING COMPANIES ABROAD.

[*Contributed by* Edward Manson, Esq.]

The whole world is now become the hunting-ground of English joint-stock enterprise; and as its pioneers, bent on exploration and exploitation, push their way into the territories of every British colony and foreign state,—survey mankind, if not in the poetic, in the scientific sense, from China to Peru, the question at once presents itself and presses for solution, What is the status of the English company in these colonies or foreign lands which it invades; what its contracting powers, what its rights and liabilities generally? The question, like most questions of international law, is one not free from difficulty. Little is to be found in English text-books or English law reports bearing upon the subject. It is in America that the principles which govern the extra-territorial status of corporations have for the most part been considered, and this for a very natural reason. As in Greece the intermingling of the varied polities flourishing side by side generated the science of politics, so in America the inter-state trading of corporations has forced the question of their status into a more rapid maturity.

The status of an ordinary person, an individual, depends, speaking generally, on the law of the country of his domicile—the law, that is, which he has elected to be governed by, by fixing his permanent residence or home there: and this principle is equally applicable to a corporation; for a corporation, whether it is a railway or a club or a municipality or a charity or a trading company, is a legal persona—an artificial persona, invisible and intangible, it is true, but still a persona, with an independent legal existence as real in law as that of an individual. The main difference is in capacity. The capacity of an ordinary person is not limited: the capacity of a corporation is limited by the objects for which it is constituted—objects defined by its special Act or charter or memorandum of association, and outside the circumscribed area of which it is smitten with impotency; but for purposes of domicile this distinction may be disregarded. For the purposes of domicile a corporation is just an incorporeal legal persona. What, then, is the domicile of such a corporation? The

domicile of its members has clearly nothing to do with the domicile of the corporation. This is a corollary from the above proposition of its independent legal existence as a persona distinct from the individuals who from time to time compose it. We may also predicate this of it, that the domicile must be somewhere within the territories of the sovereign state creating the corporation;[1] but given this limitation of area, there is still considerable difficulty in fixing the domicile of a corporation, and for this reason, that being without a body it cannot be located in any particular spot. It has only an artificial residence or home, not a natural one. It does not dwell, for instance, at a particular place by merely having an agent there (Corbett *v.* General Steam Navigation Company, 4 H. & N. 482), nor does it necessarily dwell, in the case of a trading company, at its registered office (Calcutta Jute Mills Company *v.* Nicholson, L. R., 1 Ex. D. 428); it dwells where its principal business is managed or carried on—its administrative business, that is: thus the Great Northern Railway Company's domicile is at King's Cross (its principal office), and not at any other place where it may happen to have a station or works. So the Great Western Railway Company dwells at its principal station at Paddington, that being the place where the directors meet, the secretary resides, general meetings are held, and whence orders emanate (Adams *v.* Great Western Railway, 6 H. & N. 404). The better opinion, according to Mr. Dicey (*Conf. of Laws*, 156), seems to be that a corporation has, following the analogy of an individual, one principal domicile at the place where the centre of its affairs is to be found, and that the other places in which it may have subordinate or branch offices correspond, as far as analogy can be carried out at all, to the residence of an individual (Conf. Harding *v.* Chicago & Alton Railway Company, 80 Mo. 659).

Having got thus far, the next question which arises is, What is the power of a corporation to do business in a country other than that in which it is domiciled? It is an elementary proposition that laws have no force beyond the territories of the sovereignty which enacts them. Hence a corporation can have no legal existence outside the territories of the sovereignty which created it. The corporation, being an artificial person, exists only in contemplation of law and by force of the law; and where that law ceases to operate and is no longer obligatory, the corporation can have no existence. It may send agents into other countries to do business, but the corporation itself cannot migrate. If it attempts to do so—to go beyond the jurisdiction of the laws which bind and hold it together—it dissolves into its original elements, and the persons who constitute it become mere individuals (Land

[1] It has been held in America that notwithstanding the fiction of law that a corporation dwells only in the state of its creation, and cannot migrate therefrom, yet a corporation formed in one state may be made a domestic corporation of another state in which it has offices and transacts its business (Young *v.* South Tredegar Iron Company, 85 Tenn. 189).

Grant Railway Company *v.* Commissioner of Coffey County, 6 Kansas 243). But it does not follow that because a corporation must live and have its being in the country of its creation that its existence may not be recognised elsewhere. An ordinary person being domiciled in one country is no bar to his being recognised in another country, contracting and doing business there; nor is the fact of a corporation's domicile being in one country (the country of its creation) any bar necessarily to *its* contracting and doing business in another country, provided the existence of the corporation as an artificial person in the country of its creation is recognised by the law of the country where the dealing takes place, and it is permitted by that law to exercise there the powers with which it is endowed. Recognition, then, is the test. But this recognition need not be express; it may be implied. "In the silence," says Story (*Conf. of Laws*, 37), "of any positive rule affirming or denying or restraining the operation of foreign law, courts of justice presume the tacit adoption of them by their own government, unless they are repugnant to its policy or prejudicial to its interests"; and this presumption includes the law which governs foreign corporations. Hence, in the absence of an express prohibition by statute, foreign corporations are generally permitted by the law of civilised nations to sue, to make contracts, or hold real estate like domestic citizens or corporations. The recognition thus accorded rests upon international comity (Cowell *v.* Springs Company, 100 U. S. 55)—that is to say, on the goodwill, convenience, or policy of nations deeming it advisable to grant to each other privileges analogous to those enjoyed by their own citizens or home corporations, though such privileges are not reciprocally due or *strictissimi juris*—the privileges, for example, of travelling in each other's dominions, of trading in each other's dominions, of suing in each other's courts, of doing, in fact, all things which generally belong to the citizens or subjects of each country, and which they are not prohibited from doing by some positive law of the state. Such comity promotes friendly intercourse, is in furtherance of justice, and gives encouragement to commerce. It is the interest of a state that foreigners should be encouraged to trade with it. Magna Charta, for instance, c. 30, contains an express provision in favour of merchant strangers—a provision which occasioned the striking remark of Montesquieu, that the English have made the protection of foreign merchants one of the articles of their own liberty. The right to sue—to have justice—is of course an essential part of such protection, and has been recognised as such. It is a general rule that all foreigners *sui juris* and not otherwise especially disabled by the law of the place where the suit is brought, may there maintain suits to vindicate their rights and redress their wrongs; and a corporation comes within this rule. Long ago, in our own country, the case of Dutch West India Company *v.* Moses (1 Str. 611, Lord Raymond 1532) established the right of a foreign corporation to sue in our courts, and Newby *v.* Von Oppen (L. R. 7, Q. B. 293) has affirmed the liability of such foreign corporation, if carrying on a business in England,

to be sued here; and the same principle is recognised in America (La Fayette Insurance Co. *v.* French 18 How. 404; United States *v.* Bell Telephone Co., 29 Fed. Rep. 17. The right again to contract freely is as essential in the interests of commerce as the right to sue; and it is now well settled, though not till after keen debate in America (see Bank of Augusta *v.* Earle, Un. St. R. 13, Peters 587, and an article by E. Q. Keasbey, 12 Harvard *Law Review* 1), that by the comity among nations a corporation created by one sovereignty is permitted to make contracts in another. Natural persons are continually making contracts, through the intervention of agents, in countries in which they do not reside and where they are not personally present when the contract is made. What greater objection can there be to the capacity of an artificial person by its agents making a contract in a sovereignty in which it does not reside, or what reason for excluding such a contract from the protection of the law, provided such contracts are not contrary to the policy of the state, and are within the powers—the charter—of the foreign corporation; for it must always be borne in mind that when a corporation makes a contract it is the contract of the legal entity, of the artificial person created by the charter, and not the contract of the individual members?

The privilege of recognition, so far as this country is concerned, is now expressly embodied in a series of conventions between Great Britain and other powers—France, Germany, Belgium, Greece, Italy, Spain. The terms of the convention with France may be taken as typical and are, so far as material, as follows:—

Article I.—The High Contracting Parties declare that they mutually grant to all Companies and other Associations, commercial, industrial, or financial, constituted and authorised in conformity with the laws in force in either of the two countries, the power of exercising all their rights and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions . . . . . .

Article III.—The present Convention is concluded without limit as to duration. Either of the High Powers shall, however, be at liberty to terminate it by giving to the other a year's previous notice. The two High Powers, moreover, reserve to themselves the power to introduce into the Convention by common consent any modifications which experience may show to be desirable.

The recognition is not merely a recognition of the existence of the foreign corporation, but a recognition of the constitution with which it has been endowed by the law of the country of its creation. The recognition does not render the foreign corporation a domestic corporation of the recognising state (Wilkinson *v.* Delaware Railway Company, 22 Fed. R. 353); it is the law of the charter which is recognised. Thus the corporation is

clothed everywhere with the character given by the charter. This is a matter of no small importance to the members of the foreign corporation, because on the law governing the constitution of the corporation depends their personal liability. If by the law of the constitution of the corporation the members, as Lindley, L.J., points out (*Companies*, 5th ed., p. 913), are rendered wholly irresponsible, or only responsible to a limited extent, for the debts and engagements of the corporation, the liability of the members as such will be the same in the foreign country in which the corporation trades as in the country which created the corporation. But this must not be misunderstood. Proceedings, for instance, in an English court under the Joint Stock Companies' Arrangement Act, 1870 (which does not extend to the colonies), cannot be pleaded in a colony as a defence to an action by a colonial creditor (New Zealand Loan & Mercantile Agency Company *v.* Morrison [1898], A. C.).

Another important result of this principle is that an English corporation trading in a foreign country is exempt from the often vexatious restrictions imposed on corporations native to such foreign state. In France, for instance, a trading company, whether it is a *société anonyme* or *société en commandite par action*, is obliged before starting on its career to conform to certain conditions. Its capital must all have been subscribed ; one-fourth of it paid up ; the shares must be of not less than one hundred francs or five hundred francs, according to the total amount of the capital, and so on. Not so an English company trading in France. It is governed by the law of England, and is subject to none of these official regulations, the rationale of the matter being that the foreign state which grants such recognition, whether it is France or Germany or one of the United States, grants it on the assumption that the corporation which comes to trade within its territories, as the creation of a civilised state, is governed by regulations which furnish every safeguard and security to the subjects or citizens of the recognising state who have dealings with it.

The comity which recognises a stranger corporation being, then, matter of grace and not of right, and having its origin in the welfare of the state which accords it, such welfare is the measure of the recognition. The comity is never therefore accorded where the existence of the corporation or the exercise of its powers would be prejudicial to the interests or repugnant to the policy of the recognising state. For instance, if by the law of the country in which a foreign corporation seeks to trade a corporation is not competent to hold land, the foreign corporation in question cannot do so, though by the law of the country of its domicile (of its incorporation) it is authorised to do so ; otherwise, as has been pointed out in America, the policy or interests of a weaker state might be overwhelmed by its more potent neighbours—for instance, a favourite policy of many states against tying up lands in perpetuity, revolutionised. Or, to take another instance, gaming-houses having been absolutely pro-

hibited in France, an incorporated society constituted in a foreign country for the carrying on of a gaming-house, though it might be tolerated in the country of the society's domicile cannot be recognised as having a legal existence in France, the object of such society being contrary to French law; and the same principle would apply to a foreign company seeking to hold a lottery, for instance, in England. A French Court has recently gone the length of holding that an English company formed to trade in France with limited liability is a fraud on French law (La Construction Limited). This, if generally received as law, must administer a very severe check to British joint stock enterprise in France. Nor is there, as was said in Land Grant Railway & Trust Company *v.* Coffey, 6 Kansas 245, any rule of comity which will allow one state to "spawn" corporations, and send them forth into other states to be nurtured and do business there, when the state creating them will not allow them to do business within its own boundaries. And see Rising Sun Insurance Company *v.* Slaughter, 20 Ind. 520.

This, then, is the first condition of recognition—that the stranger corporation does not offend against the policy of the state in which it seeks to trade. But besides this implied condition, the state has the fullest power in respect of recognition. It may entirely exclude from its territory corporations chartered by other states; and if it does so, the motive of such exclusion cannot be enquired into (*Beach on Corporations*, s. 411; *Morawetz on Corporations*, 2nd. ed., s. 971; People *v.* Fire Association, 92 N. Y. 311); or it may accord recognition (*e.g.*, assent to the stranger corporation trading) on terms—a regulative power very necessary in these days, when wealthy and powerful corporations are being indefinitely multiplied. Thus it may restrict the foreign corporation's business to particular localities. It may exact security for the performance of its contracts. It may impose a tax or license fee for the permit to trade (St. Clair *v.* Cox, 106 N. S. 350; Nathan *v.* Louisiana & Howard, 73); and it may do this, though no similar tax is imposed or imposable on its domestic corporations (Ducat *v.* City of Chicago, 48 Ill. 172). It may make special conditions in respect of particular classes of companies of a quasi-public character, such as banking companies, building societies, insurance companies: for instance, it may insist that no insurance company not incorporated under the laws of the state passing the statute shall carry on its business within the state without previously obtaining a license for that purpose, to be given only on the company depositing a certain sum of money, or securities to a certain amount, with a public officer of the state. It may require the immigrant company to advertise its constitution by lodging with the registrar of the state it seeks to enter copies of its certificate of incorporation and of its memorandum and articles. Such pre-requisites to engaging in business must, if imposed, be complied with; but non-compliance does not render the foreign corporation's contracts void (*Beach on Corporations*, s. 415). It would be quite impossible within the limits of an article to deal

with the special legislation of the different foreign countries and of our own colonies regulating immigrant corporations from this country. Suffice it to say that the conditions most commonly imposed on foreign corporations are conditions directed to securing that the immigrant corporation shall be amenable to the jurisdiction of the courts of the country where it trades (*Kent Commission*, 14th ed., 285 *n*). Thus by the law of Western Australia (56 Vict., No. 8, ss. 198-212), to take a typical instance—a foreign company is not to commence or carry on business until it empowers some person to act as its attorney to sue and be sued, and has an office or place of business within the colony, to be approved of by the registrar, where all legal proceedings may be served. Similar conditions are contained in the New Zealand Act, 1884, No. 27, with an additional requirement that a foreign company intending to discontinue business must give three months' notice of its intention so to do. C. 2 of the Statutes of Manitoba, 1897 (60 Vict.), provides for foreign companies obtaining a license; but to obtain such license it must first file in the office of the Provincial Secretary (i) a certificated copy of the Act of Incorporation or other instrument of association of the company; (ii) an affidavit or statutory declaration that the company is still in existence; (iii) a copy of the last auditor's report; (iv) a power of attorney from the company to its chief officer in the colony declaring at what place in the province its head office is, and expressly authorising the attorney to receive service of process in all actions against the company. Companies which have not taken out a license are not to be capable of holding real estate. The license may be revoked. British Columbia has by the Companies Act, 1897, c. 2, adopted similar precautions (see Parts VI. and VII. of the Act). Regulations like these are perfectly legitimate and necessary. They are, in truth, only an application of the law of vagrancy to corporations, and have their analogy in the restrictions now so often put by nations on the immigration of aliens.

THE EVIDENCE OF THE ACCUSED IN THE CRIMINAL LAW OF SCOTLAND.

[*Contributed by* A. Taylor Innes, Esq., *of the Scottish Bar.*]

The criminal law of Scotland occupies a peculiar position in relation to this question. It is a position intermediate and at first sight paradoxical. There are many in all countries who believe that it is the natural thing for the accused to tell his story in open court; there are many in England who have come to believe that it is a natural thing for him not to tell his story at all. But there are few anywhere who are prepared to sympathise with a system which on the one hand provides for the official examination and re-examination of the accused in private, while on the other it absolutely forbids him to tell his own story to the court in public, or in the presence of the jury. That is the long-standing system in Scotland, and it is one which needs explanation or legislation—or both.

The mere practice on the day of trial is very much alike in both countries. "The trial by jury, or assize, has by custom from time immemorial been the regular constitutional and ordinary way of trial for crimes in the Supreme Court of Scotland."[1] But in presence of that jury, and at his trial, there has been down to 1898 no right on the part of the prisoner, however desirous he may be to do it, to open his mouth even on that portion of the case of which he alone has knowledge. And conversely, there is no power on the part of the jury, however much they may desire his explanation, to put a single question to him, either directly or through the judge, or through the prosecutor, or even by the lips and at the desire of his own counsel.

The state of opinion too in Scotland, on the bare question whether a prisoner should be competent to give evidence at his own trial, is not unlike that which exists in England. On the one hand there has been a growing and by this time a great preponderance of opinion in favour of such a legislative reform. I may take for illustration the Faculty of Advocates, a body which has for centuries had the exclusive privilege of defending prisoners in all the more serious crimes. When the question was before the country in 1878 the Bar of Scotland was quite divided in its view.

[1] Hume's *Commentaries on the Law of Scotland as to Crimes*, vol. ii. 138.

Its committee agreed to report in favour of the change, but only by a majority of one. At the meeting of the Faculty itself there was a full discussion of the considerations alike of justice and expediency advanced on both sides, and as a result the two propositions into which the desired change was branched out—(1) "That the law should be altered so as to allow persons who are accused of crime to be competent, though not compellable, to be witnesses," and (2) "That it should be competent to examine a prisoner on the motion of the prosecutor"—were both carried by substantial, though varying, majorities. From this time onwards there was a steadfast ripening of opinion in the same direction, so much so that in 1887 the report of a committee approving of a similar Bill was endorsed by the Faculty *unanimously*. The same unanimity resulted when the question came up on March 16th, 1888. On June 24th, 1891, the committee itself was (I think for the first time) unanimous, and the Faculty so promptly endorsed its decision that (except in 1893, and then only for the purpose of suggesting some safeguards on the universally accepted change) the question has never since been raised. I am informed indeed, upon enquiry, that this monotonous unanimity has been, somewhat paradoxically, the sole reason why the Faculty of Advocates was not this year called together to support the Bill promoted by the Government.

And yet, during all the time, it has been known that lawyers of large experience and great ability, who were in the minority on this question in Scotland, have firmly maintained their unuttered views. In particular the Lord Justice-Clerk Macdonald (Lord Kingsburgh) has recently broken silence to record his emphatic protest against the proposed legislation.[1] And Lord Kingsburgh, more than any other man, represents the Criminal Law of Scotland, not only as having been during a lifetime its administrator, but as our chief modern institutional writer on the subject; and even more, as having become, by his Criminal Law Amendment (Scotland) Act of 1887, its successful reformer. It may be supposed, therefore, that we have at last an adequate representation of what can be said on both sides of the question. And yet I do not find that on either side—certainly not in the scanty literature which represented the victorious advance of reforming opinion twenty years ago in the profession in Scotland—has there been much reference to the historical peculiarity of the law of Scotland in this matter. The arguments which prevailed seem to have been mainly the obvious and popular ones common to both countries and to all[2]; and

[1] *Juridical Review*, April and July, 1898 (William Green & Sons, Edinburgh).

[2] Take for example the *Journal of Jurisprudence* of 1879 (p. 455), on the evidence of "the party accused":

"He generally knows more about the question than any other: he is at the source of all the light we need upon it. But then, at least in the case when he is guilty, he is under greater temptations than any other witness to deceive, and the light presumably comes to us with a maximum of deliberate refraction. But that is exactly as it ought to be, exactly as in daily life we expect it to be, only in daily life no one thinks of rejecting any

the time has perhaps now come for referring rather, in the spirit of historical enquiry and critical comparison, to the specialties of Scotland, and in particular to that extreme one-sidedness in our examination of the accused, which would sooner or later have called for legislative reform of the Scottish system, even had the tentative Act of 1898, common to both countries, never been passed.

For the Scottish question is not to be solved by a mere generalisation, apart from historical enquiry. In particular, it is not to be at once met by the generalisation which so many have derived from the attractive *General View of the Criminal Law of England.* In that work the English refusal to interrogate the prisoner is shown to have been a very modern thing, while it is at the same time described as "one of the most characteristic peculiarities of the English system." But what is its origin? It is perhaps usually accepted as due to the fundamental contrast alleged between the jurisprudence of England and that of the Latin races. Of that contrast we shall take Sir James Stephen's classical description: "A criminal trial may be viewed in one of two lights. It may be regarded either as a private litigation, in which the accuser demands the punishment of the accused, and the judge moderates between them; or it may be viewed as a public enquiry into the truth of matters in which the public are interested. This may be shortly expressed by saying that a trial may be viewed as a litigation or as an inquisition."[1] Accordingly, the English disuse of that interrogation of the prisoner, which is so marked a feature of the French inquisitorial process, is expressly connected by our author, later on, with the same fundamental difference. He says: "In the eighteenth century the practice of questioning prisoners at their trial appears to have fallen into disuse, probably because

light, *valeat quantum.* Take the early stages of a *cause célèbre,* of such a quality as to interest and puzzle intelligent men. The whole city is full of it. A few days before the trial we meet at a dinner-table a friend who has brought with him what is ascertained on good authority to be the story of the prisoner. Does any one refuse to hear it? Those present may refuse to believe the story, in part or in whole, when they have heard it; but they hear it with avidity, because they are trying to get at the truth on a matter as yet doubtful, and they all feel instinctively that for this purpose a story, even a false story, by the person who knows all about the doubtful matter, is a gain, being taken for what it is worth. Now there is no great difference between fifteen men round a table and fifteen men in a box. The latter also are supposed to be trying to get at the truth, and they are sent there for that purpose. On one point at least there is never any difference between the two. The fifteen jurymen are unanimous in desiring that the mouth of the prisoner be opened. No one ever saw a juryman who was not so desirous, unless he had already, from opinionativeness or partiality, closed his mind against farther light. But it is not the fifteen men on that side of the court alone: every man within the building, who is not either professionally engaged or interested as a partisan, desires, precisely in so far as he desires the truth and finds it doubtful, that light should come to him from this quarter as from others. There is only one man in the court who is bound to exclude that light, and he is—the representative of justice."

[1] *General View,* p. 22. My quotations are from the first and fuller edition, 1863.

during that period the theory that a criminal trial was substantially a private litigation constantly gained ground, and was combined with the reduction of the rules of evidence to a systematic form. Hence the principle that a party was an incompetent witness would be supposed to forbid the interrogation of the prisoner."[1] The general position of writers and reasoners on this subject has accordingly been that examination of the prisoner, whether a right thing or a wrong, is appropriate to a criminal system which is inquisitorial and by public authority like that of France, but is opposed to a system which, like that of England, does justice even in criminal matters as between "party and party."

The simplicity of this explanation would be disturbed by a more careful reading of Sir James Stephen's narrative, and still more, probably, by perusal of his sources. But in the first instance it receives a shock from the facts as to Scotland. The existing practice is, as we have seen, the same at the trial in both parts of the island, so far as regards the examination of the accused. But up to that day of final trial the procedure of the Scottish criminal law is contrasted with that of England, and belongs to the Continental type of public inquisition rather than to the English form of litigation between the parties.[2] And even to the end of the day of trial itself it remains essentially an inquisition, according to the definition given: "a public enquiry into the truth of matters in which the public are interested"—an enquiry too which is in Scotland wholly conducted by the representative of the public, the private accuser having no place in it whatever. More than this, the history of the two countries, on this precise point of the conflict between the system of the public and the system of the private accuser, has been sharply contrasted.

[1] *General View*, p. 194.

[2] Thus in Scotland, as in France, it is practically, though not theoretically, true that (in the words of the first sentence of the *Code d'Instruction Criminelle*) "all procedure with a view to punishment is entrusted to the officers of the law." One class of these officers throughout Scotland forms what is called abroad a "hierarchy," for from Crown counsel down to the lowest village constable they are all subordinated, and some of them directly subject, to the Lord Advocate. Their functions are those of inquisition—*i.e.*, they receive and collect evidence in regard to crime; they interrogate, and may re-interrogate, the accused in private before a magistrate; all other witnesses they interrogate or "precognosce" in private, without any supervision; they do not, as in England, furnish to the accused a copy of the depositions made against him; and the question resulting from all the depositions—viz., whether the accused is to be tried, and in what court, decided in France by three judges, is settled in Scotland by the Lord Advocate, or by the Solicitor-General and four Crown counsel, who are the Lord Advocate's deputes. On the other hand, there is in Scotland no private examination of the accused by the presiding judge immediately before the trial, and (until the Act of 1898) none while it is going on; and in the earlier stages the whole judiciary in Scotland is much less closely connected with the prosecuting hierarchy. In France both practically form one body, supposed to represent the State, so that in the result the jury is sworn to do justice between the man accused and "la société qui l'accuse." It will be remembered that on December 8th, 1897, important changes were made in France on the *Code d'Instruction* giving the accused, for example, free access at all times to his counsel (except in courts-martial!). In Scotland, as we shall see, similar provisions were embodied in the Act, 1887.

The course of the English criminal law and process, its distinguished historian tells us, has been a progress from the "form which originally belonged to them of a public enquiry" into the "form of a private litigation."[1] It would be a perfectly fair description of the history of the Scottish criminal law to say that it has been the converse—at least it has been so on the crucial point of the "instance," or the question who is to be recognised as prosecutor. We may take on this subject our highest authority in the criminal law of Scotland. Baron Hume, in the third edition of his *Commentaries*, which was published so late as 1829, says (ii. 118):

"Of the two titles of prosecution acknowledged with us, I shall first attend to that of the individual or party injured by the wrong. For although nowadays far from being a frequent sort of process (which is one symptom of the *more* vigorous and wholesome administration of the laws in our times), yet this without a doubt was the original and for long the ordinary course of trial, for most crimes that concerned individuals."

And it is only after spending twelve quarto pages upon this, the original and formerly the ordinary course in Scotland, that Hume (p. 139) takes up the modern prosecution at the instance of the Lord Advocate, the public accuser, who insists in the name of the king, and for His Majesty's interest, in the execution of his laws and for the tranquillity and welfare of his people. This office, though it probably existed at an earlier period, was not, however, much taken notice of before the beginning of the sixteenth century; and, according to the common account, it was first raised to its present high privilege with respect to the prosecution of crimes by the statute, 1587, c. 77, which provides "that the Treasurer and [King's] Advocate pursue slaughters and other crimes, although the parties be silent or would otherwise privily agree." In Hume's days—that is, in the early part of our century—criminal prosecution by the private party, though competent by law, was "far from frequent" in Scotland. At the present day, though still and equally competent, it is completely superseded by the system of the public prosecutor, and the ordinary Scotsman does not even know that the older right exists at all. We need no stronger statement on this than the sweeping utterance this year of the Lord Justice-Clerk Macdonald: "Private prosecution has practically died out in Scotland, no such thing as a private prosecution having taken place during the now more than forty years of my association with the courts of criminal jurisdiction."[2]

Our practice in Scotland has, therefore, in this particular, crossed over from the one shore to the other. It has been a progress from "the form of a private litigation" to "the form of a public enquiry," or at least of a criminal process initiated by the representative of public justice.

It will, I think, be of some interest to go back now to the point in our Scottish history where the two systems diverged—the point where Scotland might to all appearance have become conformed to the modern English

[1] *General View*, p. 154.

[2] *Juridical Review*, April 1898, p. 134.

plan of the private prosecutor, instead of going over to the other or "inquisitorial" idea. Sir George Mackenzie, a very distinguished lawyer and administrator, published his book on the *Laws and Customs of Scotland in Matters Criminal*—our most important treatise on them before Baron Hume—in the year 1678. In it he has a chapter "Of Inquisition," which he defines as "an information of the crime," taken by the authority of the judge or magistrate himself, and not at the instance of the private accuser. "The doctors are very profuse on this subject," and they divide it into "a General Inquisition, which is taken of the crime in general, without taking notice of any particular informer or defender; and a Special Inquisition, which is taken against a particular person, of whose guilt they are informed." This does not refer so much to the doctors of the Civil or Roman Law, for by that law "no judge could proceed against any private person without an accuser." It was the Canon Law by which "inquisition was declared to be an ordinary remedy." The principle, however, no matter whence derived, was by this year, 1678, accepted in the law of Scotland.

"All the doctors conclude that generally a judge may now, by the practice of nations, enquire *ex officio* into all crimes (*Farin. de Inquisit. quaest.* 1, No. 10), which is consonant to our law, by which the Council, or Justices, may enquire into all crimes, without waiting for an accuser, which is done with us without citation of the party or other formalities; but nothing can follow till, after information be taken, an indictment or summons be raised, which is followed according to the ordinary rules."

This therefore was a preliminary inquisition, not unlike what in Scotland is now called a precognition, and, like it, conducted by Crown officials. Like it too, this inquisition included in practice the examination not only of the party injured, and of third parties who might be witnesses, but of the party accused or suspected. But this Crown inquisition, though admitted in Scotland upon the authority of the doctors, was not as yet accepted as the ordinary or fundamental form of criminal enquiry. For Sir George Mackenzie goes on to say:

"But yet I think that the judge should not enquire, or take any previous trial, even in our law, where an accuser offers to insist, except he has just reason to fear collusion; for *non recurrendum est ad extraordinarium remedium dum locus est ordinario.* And albeit inquisition be declared by the doctors to be an ordinary remedy, yet it is only declared so to the effect that a judge may enquire without any accuser, and that the inquisition so taken be not *ipso jure* null. But naturally every man should have liberty to pursue the private wrong done to himself, which may be prejudged, either by the want of information or zeal of the judge ordinary, and sometimes by collusion. And thus I have seen many decreets of inferior courts, wherein the defender was by collusion fined at the Procurator-Fiscal's instance, reduced by the Lords, and not sustained by the Council, when it was alleged that the party wronged appeared, and offered to pursue, but was not admitted.

And albeit, because of the wrong that is done to the public, a judge may likewise enquire, yet he who is principally wronged should be allowed to be chief in the prosecution. And therefore, albeit the Council may, in public crimes where the peace of the country is chiefly concerned, take precognition of it and stop accusations raised before the justices at a private party's instance (as they did in the pursuit at the instance of the Strathnaver men against the Earl of Caithness and others for fire-raising and depredations in August 1668), yet they refuse to stop accusations, and will not grant precognitions in private murders or suchlike crimes where private persons are principally wronged, except the rigour of law require some abatement."

Two and a half centuries ago therefore, in the days of Charles II., the private prosecutor was still recognised, even by men who like Mackenzie leaned to the side of arbitrary power as the ordinary and natural and fundamental initiative in criminal justice. The enquiry by the Crown had been "declared by the doctors to be an ordinary remedy" also, and was accepted as such; but it was recognised not only as subordinate and secondary, but as exposed to great danger of corruption. It is a striking revelation of the state of matters in those days to have the famous King's Advocate—under whom were grouped, rather than effectually subordinated, all the Procurators-Fiscal of the day—confess that he had seen "many" sentences cut down on the ground of collusion by these public functionaries, in these their comparatively novel functions. The collusion as mentioned by him was in the interest of the criminal, the public accuser prematurely telling a smooth story, and demanding a far lighter punishment than the facts of the case would warrant had they been revealed by the injured party himself prosecuting. But it cannot be doubted that there must have been other cases, in those days of feudal administration, in which the same corrupt instrumentality was employed in the opposite direction—to aggravate offences and procure heavy sentences in cases where the party injured would not have thought it right to invoke the full rigour of the then very unequal law.[1] History has passed over most of those errors of the Public Prosecutor when they merely injured private persons; while it has been loud in its denunciation of the "Bloody Advocate" for oppressive misuse of the statutes which concerned the Church, the State, and the Crown. And that the then novel Scottish practice—of a public prosecutor in private crimes—was at that time subordinate, and might have wholly passed away, as in England, is clear, not

[1] Sir George Mackenzie elsewhere expressly points out to us the danger in his time to the life of the lieges, "especially in inferior courts, where it is very well known that persons of very little integrity sit as judges, and which judges are oftentimes interested to get the panel condemned, because thereby the escheat (at least a part of it) falls to themselves." Sir George would not have proclaimed his friend Dundee of Claverhouse as among the "persons of very little integrity." Yet it was while Mackenzie sat at the Council as King's Advocate that Claverhouse, when Sheriff of Wigton, wrote on February 16th, 1683, asking that body for a gift of the movables, within his own county and jurisdiction, of "any that are not yet forfeited *that I can find probation against.*"

only from what has been already said, but from Mackenzie's express statement immediately following:—

"It appears also that pursuits at His Majesty's instance are only subsidiary. James I., Parl. 13, c. 140: by which Act it is clear that crimes may be punished at the King's Majesty's instance, if no private follower appears; and James VI., Parl. 11, c. 76, where it is stated, 'That the Treasurer and Advocate may pursue private crimes, although the parties be silent, or would agree.' From which Acts two things may be concluded—(1) That of old it was doubted if the king could pursue private crimes without an accuser; (2) That pursuits at His Majesty's instance for private crimes are yet only subsidiary, and allowable if parties be silent or collude. Which distinction doth, in my opinion, solve that great debate among the doctors, *utrum accusatio cessare facit inquisitionem*."[1]

The two systems therefore—that of inquisition and that of litigation—hung in the balance in Scotland for a considerable time; and the "dispute among the doctors" as to their priority of excellence was even solved, theoretically, in favour of *accusatio* or private prosecution. But at the very same time the unsettled and hesitating practice was being solved *ambulando*—by history and gradual experiment—quite in the opposite direction. Notwithstanding the original "subsidiariness" of the Public Prosecutor, notwithstanding too his proved and notorious irregularities in that early time of his employment in Scotland, the institution grew into such favour with the northern community that, as we have seen, it has practically superseded the other. I shall not attempt here to trace the steps of this process or even to unfold its causes. Probably there was in our countrymen from the beginning a preference—greatly increased at the time of the Reformation—for those schemes of law, as for those schemes of theology, which give prominence to the universal and unchanging aspect of morality, sacrificing to that aspect all varying feelings, of private revenge on the one hand and private relenting on the other, such as public law must decline to recognise. At all events the result was that with us the *accusatio* shrunk into mere information, lodged by the party injured (though it is not done by him exclusively) with the Public Prosecutor. And the balance of gain in this change was on the whole with the accuser. The disadvantage to him was that the public officials claimed the right to judge whether the information given yielded a probable case for trial or even for serious enquiry. The advantage to him—an advantage which in the end carried everything before it—was that he thus rolled over upon the State and the public the expense, the trouble, and the responsibility alike of the preliminary enquiry and of all the succeeding steps of criminal procedure up to the very conclusion of the trial. By sacrificing his own initiative, he armed himself with the whole power of the State. By becoming a mere witness and informer, he threw upon the law the duty of hunting out the farther evidence and more

[1] *Sir George Mackenzie's Collected Works*, vol. ii. 223, chapter "Of Inquisitions."

complete information needed for the case—of undertaking, in short, at his instigation, the same kind of *inquisitio* which it had already asserted its right to institute spontaneously and for public purposes. And he gained one thing in particular, to which from this point we shall give exclusive attention. No man, as a private person and a private prosecutor, can expect another to submit to his examination, especially as to the very matter on which they are both at issue. But if he can show a sufficient *primâ facie* ground for the State taking up his case as a matter of public interest (be it only the public interest of righting a grave wrong), it is well within the right of the State to call upon the man accused, as it calls even upon third parties much less interested in the matter, to declare what he too knows of it. At what stage of the case this is to be done is another matter. Where, as in Scotland, crimes were always judged as questions of fact by an assize, the natural time for adducing evidence was after the jury had met. But in every country where there is a Public Prosecutor there must be a preliminary collecting of evidence by him or on his behalf, in order to decide whether and how he is to proceed. In Scotland this was undertaken in private; and in cases handed over to the public from the private prosecutor it naturally came to include, as it had already included in the spontaneous *inquisitio* of the Crown, the *examination of the accused*. But in Scotland the former private prosecutor gained far more, in exchange for sacrificing that position, than the mere preliminary examination of his opponent. He gained also the right of having that private examination laid publicly before the jury in the event of its being damaging to the accused, and of withholding it from the jury in the event of its being otherwise, and of doing both by the hand and with the authority of the representative of the Crown; while, alike in the case of its being produced and of its being withheld, the prisoner's mouth was absolutely closed in the presence of his judges.

It was not without a struggle, however, that this natural right of the Public Prosecutor to examine a man legitimately suspected of crime was translated, in Scotland, into the right to examine him in private, and to lay the result as evidence against him publicly before the jury. Many points in this I must leave to the learning of others. I shall cite, however, in the first place, the Act of James VI. (Stat. 1587, c. 90), which orders

> "That in all time coming, the haill accusation reasoning writts witnesses and other probation and instruction whatsoever of the crime shall be alleged reasoned and deduced to the assize in presence of the party accused in face of judgment, and not otherwise."

It is difficult not to suspect that this statute, at the date in that very vacillating reign when it was passed, was intended by its framers to secure that no declaration should be extracted by the Crown from the accused except in presence of the assize, and that if such a thing were done the resulting document should not be permitted to be laid before the jury. This at least is the inference from the strange remarks of Baron Hume, in

defending the modern practice (which had been finally fixed not long before he wrote) of the Crown laying before the jury a "Declaration" containing admissions and perhaps even confessions by the accused. He says:

"Nor is such an employment of the prisoner's declaration in anywise inconsistent, though it has often been argued so, with the foregoing statute of James VI. . . . As relative to the use formerly made of such a confession —the use of it as judicial, irretractible, sole and conclusive evidence of the panel's guilt, as if emitted to the assize themselves—that objection was good: For if, of itself, the declaration at once established the several facts and matters therein set forth, *certainly it was evidence of those things which was not taken in the way enjoined by the Legislature.*"

Hume concedes that the old practice of producing a declaration to the jury as conclusive evidence is inconsistent with the statute. But his reason for saying so—viz., that such a declaration is "evidence not taken in the way enjoined by the Legislature"—is equally condemnatory of the modern practice of producing it merely as evidence *pro tanto*. The objection in both cases is not to the jury attaching weight to the prisoner's admissions or confessions (if, for example, these were openly made before them); it is to the court allowing to be tendered "evidence of those things, which was not taken in the way enjoined by the Legislature"—evidence which in fact was taken (and that by the Crown itself, represented by a magistrate and a public prosecutor), in the very "way" which in Hume's judgment this statute was intended to bar. Accordingly, in his further remarks our great institutional writer is obliged to go the full length of holding that the document cannot be produced—he says even, that it is not produced—as evidence, (even *pro tanto*), that the admissions and confessions which it contains are true: that is, it is not evidence in the cause, or evidence for the charge at all. The passage is instructive, if unfortunate:

"But, according to the use now made of a declaration, the statute in nowise touches the case, because *the writing is not produced as evidence of the truth of its contents.* The prosecutor now pleads on it to this effect only, that it is a circumstance of presumption against the panel that once, at such a time, and on so solemn an occasion, he freely, seriously, and deliberately did accuse himself of that wherewith he is now charged. To show in the best and most authentic form what it was whereof he then accused himself, the writing itself must be produced; yet still, after all, it is not shown to the assize as conclusive[1] of the truth of the story there related, but as an article only in the composition and history of that circumstance of suspicion, which alone is meant to be proved against the panel—viz., that he once confessed and charged himself, before a magistrate, to a certain effect."

The Crown Prosecutor in Scotland is never permitted (and was not permitted in Hume's day) to prove a "circumstance of suspicion" against a prisoner, still less "an article in the composition and history of that circum-

[1] Or as evidence *valeat quantum*?

stance of suspicion," unless the article or circumstance be (and only in so far as it is) evidence against him in the particular charge now made. And the declaration was never an exception to that general rule. Hume's argument indeed is inconsistent with the law quoted by him on the same page, as laid down so far back as 1806.[1] And that law is still more simply and clearly expressed in the modern manual:

"A Declaration *is* evidence of its contents. . . It is evidence only as regards the person who emits it, and is evidence against him, but not in his favour. The prosecutor only is entitled to put it in evidence. The accused cannot demand that a declaration be read if the prosecutor objects." (Macdonald's *Criminal Law*, 491).

That Hume was driven to use such an extraordinary argument simply proves that the law and practice of his time, and of ours (and of an earlier time, for there were precedents in the previous century), were in his judgment irreconcilable with the "way enjoined by the Legislature" in the Act of 1587. On the other hand, Sir George Mackenzie, who was nearer the date of that Act, construed it differently from Hume. But Mackenzie, as we shall see, was opposed to the whole policy of the statute and to jury trial itself.

Another point, much less important, in which the law of Scotland did comply with that old Act is repeatedly dwelt upon by Hume. Down to the year of his latest edition "a panel confessing never could be lawfully punished till convicted by an assize." A jury had always to be impanneled, before whom the confession might be laid; and before them the accused could at once withdraw his confession and demand his trial. It was only the statute of George IV., c. 29, s. 14, which provided that when a man pleaded guilty in open court "it shall no longer be necessary to name a jury for the purpose of deciding on the guilt of such person," but sentence may be pronounced "in the same manner as if a verdict of guilty had been returned." The more recent Criminal Law Amendment Act of 1887 has provided facilities for the plea of guilty being tendered without any delay; and this was at once and enthusiastically adopted by the criminal classes, who find it to their interest to be sentenced before there has been too much time for investigating their previous record. Accordingly the ordinary work of the criminal courts in Scotland has been thus immensely smoothed and simplified, with a gain to all in both time and money. Nor has there been in this any danger to the man accused, as Hume seems to have thought there might be: for the prisoner can still, at any moment before the judge's sentence, abandon his plea of guilty, and betake himself to a jury on some future day. Summoning such a jury when the prisoner was anxious not to

[1] "By the law of Scotland declarations of panels, when freely and voluntarily emitted, are *articles of evidence* which juries are bound to attend to, and must be considered, in the general case, as weighing heavy against the panel, if containing a confession of guilt."—*Lord Meadowbank*, April 23rd, 1806.

defend himself was a formal and rather foolish compliance with the statute of James VI. What was really needed under it was that, if the accused chose to claim a jury, the "probation and instruction" of the crime should be all taken in their presence, and that they should not find an important part of it taken previously, privately, and officially.

Notwithstanding the statute, it was early settled that the Crown could examine the accused and use his declaration; but as to what use could be made of it there was "a wide difference between the notions of modern and of former times." It was often pleaded that it could not be laid before the jury at all: even Hume thought it could not be laid before them as evidence of its contents. On the other hand, in the reaction against the transient freedom of such principles as those of 1587, there were some who retrograded much farther than even the present Scottish system, peculiar as it has come to be. This matter is treated by the Scottish jurists under the head of "History of the Practice as to Confession." Confession by the accused makes a great figure in the writings of the doctors, who, as we have seen, had large influence in our old law. They seem to have included both the "civilians and canonists";[1] and it may be supposed that it is to the latter that we owe the importance attached to this method of proof. "Probation by confession is the most secure of all others, and therefore it is said in law that *in confitentem nullae sunt partes judicis.*" But it was going too far when in the days of Sir George Mackenzie the accused was not allowed to retract the confessions or admissions of his "declaration," even in the presence of the assize. This oppressive policy was carried out in two ways: sometimes the judge pronounced an "arbitrary" sentence, disregarding the retractation of the accused and his demand for a jury; sometimes, and more regularly, the jury were impanneled,—but they were instructed by the judge that they must accept the confession already made by the accused before a magistrate, notwithstanding his repudiation of it in their presence, and must find a verdict against him accordingly. So strong was the tide in this direction at that time that Mackenzie, in many respects one of our most eminent men,[2] goes out of his way to give nine reasons why the judgment on fact, as well as on law, should be handed over to judges, and trial by jury should be thus wholly abolished. I shall only quote one of his arguments, but it is comprehensive.

"Though of old, when judges and assizers (jurymen) were equally ignorant, assizers were appointed; yet now, when law is formed to a science, and that judges are presumed to be learned and assizers not, it seems reasonable they should be suppressed as well in criminal cases as they already are in civil. And since we have receded from the present custom of England *and our own old customs*, by not allowing assizes in civil cases,

[1] Mackenzie, vol. ii. 248.

[2] For an attempt to do justice to the more enlightened side of the "Bloody Advocate," see the *Contemporary Review* xviii. 248, or *Studies in Scottish History*, London, 1892.

why not rather in criminal cases, these being both of more intricacy and weight?"[1]

Juries were not abolished in Scotland, as Mackenzie proposed; but on the other hand the examination of prisoners was not allowed to be conducted in the jury's presence or on the day of trial. One reason for this may have been that "in cases which concerned the State, or which on any account excited an extraordinary interest," it had been not uncommon for Crown officials to interrogate a suspected man *upon oath*, and even to put him under torture. Before the Revolution too these oppressive practices were aggravated by the "Test Acts" in ecclesiastical matters, as well as in cases of treason or sedition; and jurymen who were unwilling to convict under this complicated system of intolerance were very severely dealt with. It was no wonder that in such a time, and even after the relief brought by the Revolution of 1688, juries were willing to connive at the silence of the prisoner in their presence; for while there was no examination in open court, the private examination by the Crown was continued in every serious criminal case, and, though not without many protests, it was used as evidence against the prisoner.

And that examination of the accused by the Crown we have down to the present hour. On the day of trial, in Scotland as in England, there is none. But it is well known that it is otherwise in earlier stages in Scotland, and this is the part of the system which is supposed to call for reformatory legislation. The objection to it is not that the accused is brought before a magistrate within twenty-four hours or so of arrest, and is invited to make a statement: that may be all right, especially as he is cautioned, in much the same terms as those of the English statute, that he is not bound to answer, and that what he says may be used against him. But what is very questionable is, that this is not merely a declaration by, but a true examination or interrogation of, the accused; that it is still conducted in private; that it is so conducted always by a Crown official, and generally by the Public Prosecutor; and that the result of this private interrogation of the accused may always be adduced as evidence against him, but never in his favour, at the public trial; while there his own mouth has been shut.

Look in succession at each of these points of the existing practice:

(1) It is in the first place a true "examination" or interrogation of the prisoner. Modern law in Scotland, as well as modern popular feeling there, have disliked this aspect of the case, and have leaned to representing the Scottish "declaration" as a mere voluntary statement. But Lord Justice-Clerk Macdonald's *Practical Treatise* is our modern manual of Scottish criminal law, and in his third edition, published in 1894, I find the following under the appropriate head of *Judicial Examination*:—

"The accused is entitled to have a private interview with his agent

[1] Mackenzie, vol. ii. 243.

before examination, and to have his agent present while it is being taken; but the agent cannot interfere with the examination, which is conducted according to the practice existing before the passing of the statute [1887] conferring this privilege." [What was that practice?] "The magistrate is the proper person to put the questions, although in practice the Procurator-Fiscal" [*i.e.*, the Public Prosecutor] "generally does so. But the magistrate must be present during the examination to protect the accused from unfair or oppressive examination.[1] . . . If the prisoner remain silent, the magistrate should interrogate him till his determination not to speak is clearly shown, and the fact that he remains silent should be recorded. If the prisoner verbally refuses to answer, his refusal is taken down.[2] . . . No pressure may be put upon the prisoner by rapid or perplexing examination. But it is not *per se* an objection to a declaration that the examination was long, or that where it is proposed to show articles to the prisoner, a few preliminary questions should be asked about them before showing them.[3] Nor is it an objection that the examination is renewed a second time or repeatedly; and this may be done not merely at the request of the accused, but on the other side on the demand of the Crown, as, for example, when it thinks it has discovered new evidence for the charge on which the accused has already been interrogated. And there may be re-examination on this ground even after the accused has been committed for trial."[4]

How truly this comes to be an "interrogation of the accused," with all the ordinary risks of excess in that interrogation, I shall show from the official reports of a case not much farther back than the middle of our century. It is the case of *Agnes Kelly*, tried on April 28th, 1843, for fire-raising in the previous year, with a list of fifty-eight Crown witnesses against her, and with three "declarations," all emitted by her on the interrogation of the Public Prosecutor, but none of them subscribed, "she having declared that she could not write."

"The declarations, on being examined by the Court, turned out to be of unusual length, one of them extending to twenty-three pages in the copy handed to the judge. They consisted of a long and skilful course of questions upon a great variety of details applicable to the evidence in the case, and most minute enquiries of the panel for a considerable time before the date of the act in question. It further appeared, from the second and third declaration, that enquiries had been made in the intervals as to the matter on which she had been previously examined, and a new series of questions took place upon the additional evidence so obtained. And further, that she had been sent out to the country and desired to point out places mentioned in her former declaration, as if she had been a witness, and had then been examined upon the matter so obtained from her.

"The Lord Justice-Clerk then stated to the Advocate-Depute that the

[1] Macdonald's *Criminal Law of Scotland*, p. 265.
[2] *Ibid.*, p. 267.
[3] *Ibid.*, p. 268.
[4] *Ibid.*, p. 269.

matter was, to his mind, most unsatisfactory. That he considered the extent to which the panel had been examined as a very great abuse of the objects for which a party accused was brought before a magistrate for a declaration; and that it was pretty plain that the second and third declaration (the last, in particular, after such a long interval) had been taken, not for the fair purpose of allowing the party to give any explanation which might be material, but with the direct object of skilfully rearing up evidence against her by questions founded upon enquiries obtained in the interval, and by leading her at a great distance of time into answers upon matters which she, if innocent, might think quite immaterial, and upon which the Procurator-Fiscal had obtained information between the examinations. That he saw little difference between such a system and the practice in France, of subjecting parties accused to an examination upon every point in the whole case, *except that in the latter it was done in public and with greater securities.* That there was no equality between a Procurator-Fiscal, with all the alarm of imprisonment and the authority of a magistrate and the terrors of an accusation to back him, and a poor country-woman of fifty-five years of age, a common farm-servant, uneducated and illiterate, if such an encounter of wits was to be permitted. That he thought the whole purposes and objects of taking a declaration from the accused had been overlooked.

"The Advocate-Depute stated that he was desirous at once to say that he had not a case upon the evidence to place before the jury, unless the declarations could be used against the panel as perfectly free from all doubt and suspicion; that his case mainly rested upon these declarations, and that the strongest part of the proof would be contradictions afforded to a variety of the statements in these declarations. He wished the Court to understand that without the declarations, combined with the circumstantial evidence which he had obtained, he had not the slightest case on which he could take up the time of the jury; and if therefore the declarations were not wholly free from doubt, he would at once give up the case.

"The Lord Justice-Clerk wholly approved of that course being taken, after the statement which had just been made. . . The jury would therefore find a verdict of not guilty.

"The jury accordingly found the panel not guilty."[1]

It will be observed that even in this extreme case no part of the interrogation and cross-examination (which was all on the side of the Crown, of course) was declared illegal. It was merely the extent to which it had been carried which the judge thought a very great "abuse," and it was in deference to that expressed view that the case was withdrawn. I cannot but think that in our more modern times the Court would have uttered a firmer condemnation of the excess, if such a thing could now exist. But as we have seen, the whole usual practice, of which this case was an unusual and unfortunate abuse, and in particular the practice of "interrogation,"

[1] Broun's *Reports of the Court of Justiciary*, vol. i. 543.

remains now as it did then. Even as to the head which follows, it is stated that it too remains, except in one particular, as it was "before the passing of the statute of 1887." For

(2) It is still a private or secret examination. What the authority for this practice is, apart from its inveteracy and long continuance, I shall not now enquire. But it has all along been a peculiarity of the greatest importance. The accused, within the shortest possible time after he had lost his personal liberty, found himself *au secret* before the examining magistrate. Only one other was present; but he was—the Public Prosecutor or accuser. It was in presence of these two alone that excessive examinations such as those of which we have just read were carried on after intervals of months of imprisonment. It was in presence of these two alone that the ordinary and reasonable interrogations of more usual cases were put at first, and sometimes were repeated. The grievance pressed so hard that it made at least some alleviation quite necessary. Section 17 of the Criminal Law Amendment Act, 1887, passed by the Lord Advocate Macdonald, provides:

> "Where any person has been arrested on any criminal charge, such person shall be entitled immediately upon such arrest to have intimation sent to any properly certified law agent . . . and such law agent shall be entitled to have a private interview with the person accused before he is examined on declaration, and to be present at such examination, which shall be conducted according to the existing practice."

This, as will be observed, is apparently construed as allowing the agent, but no one else, to be present; and even the agent, while he may give private counsel and no doubt some moral support to his client, "cannot interfere with the examination"—perhaps not even by protesting. The magistrate—who is generally the same magistrate who has granted the warrant to arrest, and will be asked to grant one for commitment—is the only person who controls the examination, and can restrain it in the interests of the prisoner. But this leads to a third question:

(3) Who examines or interrogates? As we have seen, "in practice the Procurator-Fiscal generally does so," even as late as 1894: that is, while there is no final interrogation of the prisoner in presence of the jury, he is at once interrogated in private by the local Crown Prosecutor, who has already procured his arrest, and who has now the duty of preparing evidence for the conviction. But while this is so in fact, we are told in the same sentence by Lord Justice-Clerk Macdonald (with the full concurrence of all other recent authority) that "the magistrate is the proper person to put the questions." The system has thus slipped into obvious inconsistency. But inconsistent as it now is, one cannot do it justice without looking at the practical as well as theoretical difficulties. The magistrate (usually the local sheriff or county court judge) has always the duty of controlling and regulating the examination as well as of warning the accused. Were

he to go farther and himself "put the questions," he must first find out what questions have to be put; and for this he is by our present system dependent upon the Procurator-Fiscal, who has now the whole duty of local enquiry into crime, who is for this purpose in constant communication with the police, and who has by such means framed against this particular accused the charge which he is now preparing to answer. Plainly, if the man accused answers at all, and if any questions are to be put to him at this stage, these questions must be more or less at the suggestion of the Procurator-Fiscal, if not from his own mouth. Nor, secondly, is it quite clear even theoretically that if there is to be private interrogation of the accused at all, it is the magistrate who should actively undertake it; for the magistrate, in a vast proportion of the annual crimes and offences of Scotland, is the same local judge who is afterwards to try the case. And there is a certain danger to his impartiality, and still more to the belief in his impartiality, if he is to take active charge of the early enquiries into crime—enquiries either by way of a "general inquisition" or of that more "special inquisition which is taken against a particular person of whose guilt he is informed." Whether there should be a private and preliminary interrogation of the accused at all, whether all interrogation should not be postponed till it can be done before the jury, is another question; but so long as the Scottish practice of private enquiry prevails, and so long as by it declarations are procured which are to be evidence for the Crown alone and against the prisoner, so long there will be a question whether the judge-magistrate is the "proper person" to put the questions or the most improper of all. It is with reference to this very matter that Hume sums up his chapter "Of Arrest and Precognition" in these words: "In every point of view it is better and more suitable that the judges, like the assize [jury], should enter on the trial without any previous knowledge or impression of the case." "It is now a long time," he adds, "since there was any room for a complaint in this respect": in respect, apparently, that a judge himself chose to put the interrogations to the prisoner whom he was afterwards to try. But in so saying Baron Hume naïvely omits the case of all except the Supreme Court judges, whose function in "our more ancient practice" was what that of their judicial subordinates is now. It was then "nowise uncommon for a precognition to be taken at instance of the Lord Advocate, or his deputies, before the supreme judges themselves or some of their number, who were afterwards to sit in the trial." In later times, however, "the entire care of conducting these enquiries has devolved on the sheriffs, justices of the peace, and other inferior judges."[1] In the case, therefore, of these

[1] Hume, vol. ii. 83. He elsewhere observes that the judges cannot control or superintend the Public Prosecutor in the execution of his office; "indeed, to allow any such interference on their part would be in substance to make the judges prosecutors, who ought to be kept free as far as possible of all previous impressions of the case" (vol. ii. 134).

inferior judges, if there are to be interrogations of the prisoner in absence of the jury, the grave question still remains whether they are to be by the magistrate who may afterwards have to try the case, or (according to the commoner present practice) by the local Public Prosecutor under the magistrate's control. Both have great disadvantages.

But this retrospective utterance of Hume's is a timely reminder that in the Scottish system, as in that of France, there was originally no such broad distinction in matters of criminal enquiry between the duties of the magistracy and that of the *procureur*. Both acted for the public, both acted for the Crown, and both, as we have seen, were entitled to make "inquisition" as to a particular crime or even a particular accused, especially if it was ascertained that the private prosecutor was not to take the thing out of their hands. With us in modern times the private prosecutor has vanished; and though the resulting custom varies, it is generally in favour of the procurator (or local representative of the Lord Advocate) examining. But it was so also in the old days when judges of the Justiciary Court still made inquisitions. "The custom with us," says Sir George Mackenzie in the Stuart age, "is that the [King's] Advocate doth, in presence of the justices, examine the party to be accused; and if he confess, either he subscribes his confession, if he can write, or else the justices subscribe for him," etc.[1] This point of "confession," however, may lead us on from the question between the two official examiners to the grave use which is afterwards made of the statements which they, between them, still receive in private from the accused.

(4) The statements thus elicited by the Crown officials in private examination of the accused may be brought forward at the trial as evidence against him, but never in his favour (while at the trial he could not himself, until this year, be examined or cross-examined at all).

This is certainly one of the most doubtful aspects of the criminal procedure of Scotland. Were it not for this it might be quite possible to represent our interrogation of the accused as in his interest, or at least in the interest of justice. Its primary object, in modern times at least, is to enable the magistrate[2] to decide whether he may not at once release the accused, instead of committing him for trial. In order to do so he may have to extract the story of the accused as well as that of the prosecutor, and may have to interrogate the accused on those points of the prosecutor's story which call most for explanation and defence. It is all right if it is

[1] *Mackenzie's Works*, vol. ii.

[2] Nominally the magistrate. But in practice in Scotland the magistrate never resists the application of the Public Prosecutor for a commitment so long as a trace of suspicion remains in the case. And practically the real and very important use of the prisoner's declaration is to set the prisoner's story or explanation before Crown counsel along with the other "precognitions," that *they* may judge (1) whether the Crown should persist in the prosecution; (2) before what court and with a view to what penalty it should be brought.

done equally and openly and with a view to the question of immediate committal or release. But when that question is decided against the prisoner, and his fate is thus handed over to the final decision of a jury sitting on the facts, it is hard that that jury should be deprived in the ultimate stage of the case of that very assistance of personal examination which both judge and prosecutor found so helpful at its beginning. And it is harder still that the jury, deprived of this advantage, should have substituted for it a mere document containing the alleged result of a personal examination, not by themselves or even in their presence, but by officials who have already come to a finding to a certain extent unfavourable to the accused. And even this document (if it is handed to the jury at all, which is ordinarily in the option of the prosecution) is laid before them on the legal understanding that it is not evidence in so far as it is in favour of the accused, but is to be accepted by the Court exclusively for what it proves against him.

I need not say that this one-sided fetter on the freedom of the jury is in practice made as light as possible; and that, in particular, the Crown almost always produces the declaration when the prisoner desires it, and allows the prisoner's counsel to comment upon it very much as if it were the accused's evidence given in the box. Every effort is made to be fair. But it is all done under the adverse pressure of an antiquated system; and within the last twenty years I have myself, when acting as the Lord Advocate's depute on circuit, been *forbidden* by an able and experienced judge to lay before the jury a "declaration" which the prisoner, who had uttered it, believed to contain something in his favour, and which accordingly he had requested, through his counsel, that the Crown should read.[1]

I shall assume, in favour of my readers, that a system which in its examination of the accused combines all these elements of one-sidedness, appears highly objectionable. It may therefore be of some historical interest, and (as recent legislation has left the Scottish criminal "declaration" and the legal use of it untouched) of some practical interest too, to enquire how far the omission

[1] The incident (and I believe I have preserved the words) was as follows:—

"*Scene.*—Stirling Circuit Court.

"*Counsel for Accused*: I request that the prisoner's declaration be read.

"*Adv.-Depute*: Certainly; the clerk will read it.

"*Judge*: Stop. I must ask, Mr. Advocate-Depute, whether you read this declaration as part of your own case or simply because the prisoner and his counsel wish it.

"*Adv.-Depute*: I do not think it of any value for my own case, my lord; but if the prisoner imagines it has any value for him, I think it the duty of the Crown to consent.

"*Judge*: Then I cannot permit it to be read; to do so would be contrary to law and to the whole idea of the declaration in our practice."

In subsequent cases before this excellent judge, it may be supposed that the Crown found it convenient, as well as just, to make the prisoner's declaration "part of its own case."

of each of these elements in succession would have attained the ends of what we in modern times consider justice.

1. The examination might have been made a mere opportunity for a voluntary statement by the prisoner, both magistrate and prosecutor being forbidden to put those questions on the crucial or suspicious points of the case which are now customary.

Of course such a statement, in the absence of all cross-examination, would be of much less value for arriving at the truth. It would at once become comparatively useless for the grand-jury duties which in Scotland are really discharged by counsel for the Crown under the Lord Advocate. It would in some cases become necessary in the meantime to find a true bill against an innocent man, who under the present system of more thorough examination is able at once to disentangle himself from suspicious circumstances. And as in Scotland the accused is never at this stage told the details of the charge against him, and still less is informed of the evidence (as he is in England through affidavits) by which that charge is to be supported, the whole usefulness of the "examination" would tend to disappear. In every point of view indeed the change would be a doubtful reform. It would apparently be much better either (1) to retain the present statement by the prisoner and cross-examination by the Crown officials, but to use it as a mere "precognition" taken for the private and immediate purposes of the Crown, which should lose its right of afterwards producing the precognition at the trial as evidence against the accused; or (2) to surrender the whole preliminary and private examination by the Crown, and exchange it for the public examination in presence of the jury.

2. The judicial examination might have been in public instead of in private; and a step towards this has recently been taken by allowing the prisoner to be accompanied, though not to be represented, by his agent. For a precedent of proceedings, which are public as well as preliminary, we in Scotland have only to cross the border into England. There may be a doubt, however, whether mere publicity would be in our case any advantage. The scandal of it would certainly out-balance the gain unless it were accompanied by a reform under the next and more important head.

3. The declaration—at present the only evidence by the prisoner which comes before a jury in Scotland—might at least have been the result of examination not merely by the prosecutor (or even by the prosecutor and the magistrate), but also by the prisoner's own side and his own agent or counsel.

The suggestion is hopelessly unhistorical if applied to the period when our Scottish system took origin; but it is absolutely demanded by the modern sense of justice. The test would be the attempt to examine the accused in open court in the same one-sided way in which he is at present examined in private. It may be assumed that under such a new system the judge would be the prisoner's advocate, so far as to prevent undue or unfair

pressure upon him by the Procurator-Fiscal's or Advocate-Depute's examination: yet even so, that an accused man should be handed over exclusively to the Crown for an examination which must in the circumstances be hostile, however, fair—handed over without any right on the part of his own counsel to re-examine or at all to "interfere" in the examination,—that such a system should be carried on *in public* would be found a practical impossibility. And to continue to carry it on so in private (with an option of producing the result in open court against a man tried for crime) will probably be soon equally out of the question.

4. The result of the judicial examination—*i.e.*, the declaration—if produced at the subsequent trial at all, might have been made producible at the instance of the prisoner as well as of the Crown, and might have been evidence in his favour as well as against him.

Of course no jury since the world began would be satisfied with this as a substitute for the actual examination of the man in their own presence; but it would be an immense advance upon the present Scottish system, and, if combined with one or two of the other minor changes, would wipe off the darkest blot upon our criminal administration. And as to this fourth suggestion of what might have been, I do not think it unhistorical. The comparison of Mackenzie and Hume with the statute suggests that while our lawyers and doctors favoured confession as in some ways the most conclusive proof of all, the *principle* of our law was unfriendly to accepting any confession, or even any declaration, by the accused, except what was given in open court. It was so unfriendly to it that, as we have seen, in order to excuse the contrary modern practice, our chief authority on criminal law is driven to suggest that the prisoner's declaration may be received against him rather as evidence of the nature of *res gestæ*, or perhaps as something casually overheard and ultimately reported to the jury—reported to them too, not really as evidence of the charge made, but rather as evidence of the suspicion which caused it to be made. It follows most clearly that on the like reasoning, and in some similar way, and to at least the same extent, the prisoner also should be entitled to use the incident in so far as he conceives it to be in his favour. But of course Hume's reasoning is inconclusive even for his own purpose, and the one-sided practice is as incapable of defence on his principle as it is on any other. The true modern general principle is that while we no longer shut out witnesses on the ground of interest, we admit them all *cum notâ*—with exactly as many grains of salt in each case as the discriminating and truth-loving palate finds in each case to be necessary. Accordingly, both parties in a civil case now give evidence, notwithstanding that the sum which is in question between them is the measure of the interest each has to swear falsely. So the criminal law, which until the verdict has been returned does not presume that the story of the accused is less true than that of the leading witness against him, is bound not to intercept either story or to withdraw

it from the jury. It is at least bound not to give to the prosecutor, of all people in the world, the option of laying or not laying before the jury the judicial declaration of the man whom he urges them to convict. And when that document is produced, it should have all the weight as evidence in favour of the prisoner which the jury is willing to give to the statements of one so deeply interested.

But when all concessions have been made to the present Scottish system, and all improvements on its preliminary examination of the prisoner have been accepted, it seems still impossible to believe that it can ever take the place of a real interrogation in presence of the assize. I shall not dwell upon this, but shall look finally at three objections which have been made to such interrogation.

One great objection to examining the accused in open court has always been that a nervous or stupid prisoner would thus be placed under great disadvantage. We may pass over the answers which have been made to this objection in so far as these apply both to Scotland and England;[1] but it seems impossible to escape from one *a fortiori* argument in so far as it condemns the present "declaration" in Scotland.

[1] *E.g.*, "The nervous or stupid prisoner is at a disadvantage. But so is the nervous or stupid *witness* at a disadvantage; and you have much less right to force him against his will into the witness-box, and make him tell his story under the sanction of perjury, than you have in the case of an accused. Every nervous person and every stupid person dislikes to give evidence; but the person of all others who has least right to act on that dislike and refuse to speak is precisely the person whom the objection singles out to protect—the man whom the prosecuting authorities believe to have committed a crime, and whom the jury invite simply to tell them the facts he happens to know." No doubt the law should not make him speak, as it does the others, by threat of imprisonment; but that is because he speaks under the more immediate sanction that if he refuses the jury will necessarily reckon it against him.

THE LAW OF COLLISIONS AT SEA: A STEP TOWARDS UNIFORMITY.

[*Contributed by* R. G. Marsden, Esq.]

At a Conference of the Comité Maritime International, held at Antwerp in September last, resolutions were passed to the following effect :—

(1) In case of collision without fault in, or without fault being proved against, either ship, shipowner and cargo-owner should bear their own losses.

(2) In case of collision between a tug, or between the ship in tow, and a third ship, by the fault of the tug, the owner of the ship in tow should be liable, except where those on board the tug are not the agents of the owner of the ship in tow.

(3) In case of collision by the fault of both ships, the owner of each should be liable for damage to the other, or to her cargo, in proportion to the fault of his own ship.

(4) In case of collision by the fault of a compulsory pilot, the shipowner should be liable.

The resolutions were otherwise worded, but the above is a short summary of their effect.

The Comité Maritime International is an association of committees which have been formed in Belgium, Denmark, England, France, Germany, Holland, and Norway for the purpose of introducing, if possible, more uniformity into the diverse laws of maritime nations with reference to collision and other kindred matters. The constitution of the committees shows that the principal commercial and legal interests in each country have been consulted and are fairly represented. The English committee is nominated by the International Law Association, and Sir Richard Webster is its President. The matter, therefore, so far as this country is concerned, has been handled by some of those who are best able to bring it to the attention of Parliament. What is no less important is the fact that the agreement arrived at with reference to the above matters was almost unanimous.

The first resolution merely gives effect to the law of England, declaring

it to be preferable to the laws of Holland and of Portugal, by which, if a ship under way fouls a ship at anchor, even without negligence, the latter is entitled to recover half her loss.

Resolution (2) is intended, apparently, to express the law of England; but it would necessitate a change in the laws of France and Holland, by which the *primâ facie* liability of the owner of the tow for fault of those on board the tug is not recognised. This *primâ facie* liability depends upon the doctrine of the English courts, that the tug is "the servant" of the ship in tow. There was some discussion at the Conference as to the soundness of this doctrine, which is certainly not beyond suspicion. The owner of a waggon which is being hauled upon a highway by a traction engine, or the owner of a truck of coals upon a railway, would not, we apprehend, even *primâ facie* be liable for damage done either by the engine or by the truck; and although our Admiralty courts, influenced, it would seem, by *dicta* in the early towage cases as to the tug being the servant of the tow, have for many years cast the whole liability for damage done by the fault of the tug upon the owner of the tow, the principle upon which they have acted is not clear. There seems to be some doubt whether the personification of the ship has not in this, as in other cases, given rise to a false analogy and to a wrong application of the common law doctrine of *respondeat superior*. There are certainly many cases in which those on board the tug have the whole control of the navigation of both tug and tow, and in such cases it is a perversion of the common law to hold that they are the agents of the owner of the ship in tow. Upon this question the presence at the Conference of delegates from the United States would probably have modified the terms of the resolution; and for this and other reasons the absence of America from the Conference is much to be regretted. The Americans have had more experience in this matter of towage than any European country; and their courts have taken a somewhat different, and perhaps a more just, view of the liabilities of tug and tow than has usually been taken by courts upon this side of the Atlantic. The reservation in the resolution as to the liability of the owner of the tow where it is proved that those on board the tug are not his agents, is probably intended to bring the decisions of our Admiralty Court into harmony with the common law. But the terms of the exception are altogether too vague; for, as the Admiralty decisions stand at present, it is not clear that the doctrine of the tug being "the servant" of the tow is not intended to be a rule of law and not a question of fact.

The next resolution, though by no means the most important, is upon a matter touching which the law of England is in open conflict with that of most, if not all, other European nations. The point of law, though minute, has long had a great attraction for jurists and Admiralty lawyers; it has, in fact, been a principal cause of the present agitation in favour of uniformity in maritime law. The point is this: Where both ships are in fault for a collision,

the law of England divides the loss equally, however great the fault of one ship, and however small the fault of the other; the laws of France, Belgium, Norway, Denmark, and some other European countries divide it between the two ships in proportion to their respective faults. The old common law of England, and the codes of Italy, Spain, and (hitherto) Germany cast the loss in such cases where it falls, refusing to allow a ship which is partly in fault for a collision to recover anything. As to Germany, it is significant that in her new code, which comes into force next year, the rule of "both to blame, neither can recover" is abandoned, as it was by the English legislature at the passing of the Judicature Act in 1875. The new German code adopts the proportionate rule, as proposed by the Antwerp Conference. There is much to be said in its favour, and the English rule is hard to justify. The old common law rule of no recovery was logical, and seems to satisfy people on shore, but it has never prevailed extensively in case of ship collisions; and although it finds a place in the existing codes of Holland, Spain, Italy, and Germany, the last-named country is, as we have seen, on the point of abandoning it; and Holland, it would seem, is willing to do so. What the intention of Spain, Italy, and America may be, we do not know, since none of these nations were represented at the Conference. The American courts, however, have not yet finally decided whether the proportionate rule does not already exist in their country; for a recent decision of an American Federal Court has awarded damages in a collision case upon the proportionate basis. This, however, is a decision of first impression, and it remains to be seen whether the Supreme Court will recognise any other decision than that of equality. The question whether we in England shall abandon the rule of equal division and adopt the proportionate rule does not appear to be of great importance. If by making this concession to continental opinion, which is strongly in favour of the proportionate division, a step may be gained towards uniformity in more important matters, there seems to be no serious objection to the proposed alteration in English law. Almost the only objection which has been raised to the proportionate rule is that it introduces a new element of uncertainty into business calculations of liability; that it will make the speedy settlement of claims for collision less easy and therefore less probable. As to the difficulty of determining the exact degree of fault in either ship, we are assured that in practice this does not arise. In France and Belgium, where the proportionate rule has been in operation for some time, the apportionment of fault and loss is almost always into fourths or thirds, and no difficulty has been found to arise in practice in applying the rule so as to work "substantial" justice. It is not generally known, but it is the fact, that there are extant several early sentences of the Admiralty Court awarding partial damages in cases where both ships were to blame, and also where one ship only was in fault. The judgment of the House of Lords in 1824, which, for the first time, decided that the rule of equal division is the only rule of English law, was passed

without reference to, and probably in ignorance of, these cases. It is probable, also, that the rigorous logic of the common law, which prevented recovery by one who was even in part the cause of his own loss, was in practice considerably mitigated by the liberty exercised by jurors in assessing damages. In at least one reported case where fault existed on both sides, the jury has incontinently found a verdict for the plaintiff, assessing the damages at a sum which is obviously not the whole of his loss; and it has in practice been found difficult to disturb such a verdict, although the only apparent reason for not giving full damages was that the jury thought both ships to have been in fault.

As to the last resolution, touching the defence of compulsory pilotage, there was considerable discussion; and although the final decision of the Conference, that compulsory pilotage should be no defence in the case of a collision caused entirely by the fault of the pilot, was unanimous, the discussion disclosed some difference of opinion. The question is whether the shipowner should be liable for a collision caused by the fault of a pilot, whom he is by law compelled to take. In England he is not liable; upon the Continent generally, if not everywhere, he is liable. From France, however, and from Holland their came, at the Conference, strong expressions of the opinion that the law of England upon this point is preferable to that of the Continent. It is singular that the strongest opposition to the continental law on this point should have come from France, where the law regards the pilot not as the master of the ship for the time being, but as the master's adviser in matters requiring local knowledge. It would have been far better if the English courts had from the first taken this view of the pilot's position. As matter of practice, the pilot does not supersede the master in command of the ship, except so far as the master and his employers choose that he shall do so. No owner or master would hesitate to take his ship out of the hands of a pilot who was manifestly taking her into unnecessary danger. True it is that there is danger in a double command, in divided responsibility; but it is a danger that is unavoidable, and one that is run every day. Where, as in many collision cases, the question is whether in the open sea proper steps were taken to keep clear of the other ship, there should be no question that the master and ship's officers are primarily responsible. Local dangers have not to be reckoned with in passing every vessel; if they have, the master will make the best use he can of the pilot's local knowledge. Situations do occur in which it is almost necessary that one man, and one man only, should control every movement of the ship. But even in these cases no law requires the master or the owner to give up the charge of his ship to the pilot; nor is there any valid reason why, if he chooses to do so, he should escape liability for damage which his ship may do, and which he might, ex-hypothesis, have prevented. The law itself is quite modern, and for centuries was unheard of in the Admiralty Court. It was invented by common law judges, unacquainted with sea usage and

unassisted by nautical assessors. Having found its way into the Statute Book, at the instance, probably, of interested shipowners, it was reluctantly adopted by the Admiralty judges, and has ever since been the despair of Admiralty practitioners, owing to the confusion and inconsistencies of the Acts relating to pilotage. Though it has a superficial appearance of justice, it has in practice worked great hardship and injustice. If the recent Conference results in nothing else, it will have done no small good if it abolishes the defence of compulsory pilotage. That gone, the whole subject of compulsory pilotage will once more come to the front, and we shall see whether the system can stand without the questionable support which it has so long received from interested shipowners.

Besides the subjects above mentioned, the Conference disposed of two minor matters of procedure. It was agreed (1) that a protest should not be a condition precedent to bringing an action, and (2) that an action for collision must be brought within two years. The results already attained are of importance, and the unanimity with which the resolutions were passed is remarkable. Whether the consequential changes in the municipal laws of the countries affected are made forthwith or not, it is certain that the resolutions of the Antwerp Conference will have to be reckoned with in any future legislation upon the subject of collision.

A Conference is to be held next year in London, and there a question of greater and more far-reaching importance than any yet dealt with will come forward for discussion—namely, whether the liability of shipowners for collision should be limited, and if so, to what amount and in what way. This subject was started at Antwerp, but it was found to be a thorny one, and the matter was postponed for further discussion. At present the law of England is quite at variance with that of the Continent. In England the liability is measured by the ship's tonnage: £8, or in certain cases £15, multiplied by the ship's tonnage, gives the limit; and the resulting amount is payable whether the ship survives the collision or not. Upon the Continent the limit of liability is the value of the wrong-doing ship after the collision; and the shipowner can always escape personal liability by abandoning his ship and freight. If the ship is sunk by the collision, nothing can be recovered. The discussion at Antwerp disclosed a strong difference of opinion between the English representatives as to whether the English rule is desirable even for Englishmen.

The liability under English law is heavier than that under foreign law, which is said to press hardly upon English sufferers by collision who have to resort to foreign courts. Upon the other hand, the continental law, by which the possibility of recovering anything depends upon the accident whether the guilty ship sinks or swims, was characterised as unreasonable and unjust. The discussion showed that this question of limitation of liability will be a difficult one to deal with. The difficulty is the greater because there is no logical basis for fixing the liability at one sum rather than

another. Shipowners of all countries are agreed upon one point only—namely, that some limit must be put to their liability. But why this should be so is not clear; and it may become necessary to consider the wider question, Why should the liability be limited at all? Why should shipowners require a special law for their exclusive benefit and protection, whilst all the rest of mankind are content to be liable to the uttermost farthing for all the damage they or their servants may negligently do to others? The enormous sums now at stake upon the sea, the vast liability which a trifling act of negligence may entail, and the impossibility of ensuring by any amount of care ashore proper care and caution on the part of seamen at sea are the reasons assigned for the special protection given by the law to shipowners. On the Continent this protection extends even to contracts entered into by the master on behalf of the shipowner. It may be doubted whether this anomalous law has been altogether beneficial either to the public or to shipowners; whether it would not be better in the long run for all parties to allow the ordinary law to apply to negligence at sea as well as to negligence on shore. The wholesome rule that a man shall make full compensation for damage done by the negligence of his servants has been found by the experience of ages to be necessary for the protection of those who are liable to suffer by their carelessness. To measure his liability by the size of the instrument with which the damage is done, as we do in England, and to discharge him from all liability if the instrument is lost in the process, as they do on the Continent, reminds one more of archaic forms of law than of modern principles of justice.

THE PROGRESS OF THE JUDICIAL SYSTEM OF JAPAN.

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The object of this paper is chiefly to give a short account of our judicial system and its progress since the Restoration of the Imperial Authority in 1869. But in order to do so I am obliged to make some reference to the judicial system under the Tokugawa Government; for even after the Restoration it had a marked influence for a certain period, and unless we have some knowledge of it we are unable to see how far our judicial system has made progress.

Unfortunately, however, the judicial system under the Tokugawa Government is not very well known, owing to the want of reliable books and papers, as all judicial matters were kept secret at that time. Thus my knowledge of this subject is necessarily limited, and I can only give a few scattered details.

At the outset, I may state positively that the judicial system under the Tokugawa Government was entirely unaffected by any European forms of procedure, even after the country had been thrown open to European civilisation. As on all other branches of our institutions, China had a great influence, and laws and customs were more or less affected by Chinese morals and literature. When Chinese civilisation was first introduced into Japan, our ancestors tried to adopt Chinese laws and customs, as we now adopt those of Europe. The elaborate codes, known as Ritsu, Rei, Kaku, Shiki, were mere reproductions of Chinese laws of the Tong Dynasty. Although these laws were actually used for a certain period, the feudal system acted as a bar to their operation. In fact, the feudal system had exactly the same effect in Japan as it had in Europe: it completely prevented any organised system of law. What we therefore find under the Tokugawa Government are a few scattered rules for the punishment of crimes, and very few for civil matters. Under the feudal system, besides the feudal lords or Daimios with the Shōgun at their head, there was a marked distinction between the

Samurai class, or warriors, and the Heimin class, or common people. Trade or commerce was the business of the latter class, and consequently developed very little. Land was the property of the lord, and peasants were serfs attached to the land. Hence there was hardly such a thing as what we now call an individual right of property. Even the right of life and death, or *Jus vitae necisque*, if I may use the Latin expression, might be said to have been in the hands of the lord as it had been in the hands of the paterfamilias at Rome. Each feudal lord had almost absolute power in his domain, though it is said that in cases of an important nature, regulations issued by the Tokugawa Government had to be observed. Hence there must have been different laws in different provinces.

The customs and regulations which I now mention are those of the Tokugawa Government.

The most remarkable feature is that there was little or no distinction between law and morals. The Confucian theory of morals was freely adopted. Those who have read the autobiographical works of the celebrated Arai Hakuseki will be quite convinced of the truth of my statement. He was the greatest statesman, economist, and scholar of his time—added to which he had the honour of being the first Japanese who learned a European language and wrote about Europe. Having been the teacher of the fifth Shōgun and an adviser of the Government, his opinions were frequently asked in order to decide civil and criminal cases, when new and important questions had arisen. His answers were always wise, and did much good to the country. Perhaps some of the ladies and gentlemen present may have heard of the celebrated case of the 47 Rōnins who in retaliation killed the enemy of their master. Retaliation itself was not forbidden by law. Thus public opinion was much inclined in their favour. The Government was at a loss how to decide the case. The opinion of the celebrated Chinese scholar Ogin Sorai was asked, and he answered that however praiseworthy the deed might have been as an act of the Samurai, a breach of the public peace could not be tolerated; and if such a deed were left unpunished, deeds of a much graver nature, perhaps even affecting the dignity of the Shōgun, might be committed. He seems to have answered like a lawyer. Hence those Rōnins were sentenced to commit *harakiri*.

There was also no demarcation between judicial and executive offices. The prime minister (*Gotairo*), other ministers (*Goroju*), the director of the ecclesiastical bureau (*Jishabugio*), the director of the treasury bureau (*Kanjobugio*), the governor of the city (*Machibugio*) were all judges, and sat on the bench to try civil and criminal cases. Under these judges there were *Shiroheyaku*, or assistant judges, and *Tomeyaku*, or clerks; who were actually judges, as their recommendations were generally adopted by the superior judges. Hence, in later days of corruption, these semi-judges had very great power, and were much dreaded by the people.

Civil and criminal trials were conducted privately, and the knowledge

of law and practice became secret in the hands of the officials, just as the knowledge of the Roman law and practice had once been sacred in the hands of the patricians till Cnaeus Flavius, a clerk of the court, betrayed the secret.

One most remarkable rule in criminal trials was that no prisoner could be convicted and punished for his crime unless he made a full confession. No doubt this rule was adopted with a benevolent motive; and by a full confession was meant a voluntary confession. But as torture was permitted to be employed at the discretion of the judge, the rule was much abused to extort confessions. Many innocent persons might succumb as victims to the rule, while many desperate criminals might escape scot-free. But it must be admitted that even then judges who resorted to torture were considered to have been bad judges. The name of a judge, Ooka yechi zen-no-Kami, is much revered even now because he seldom resorted to the horrible means of torture. The Tenichibo trial was the *cause célèbre* of Tokugawa trials. It was through skilful examinations and much pains taken in order to collect important evidence that Ooka obtained a full voluntary confession from the pretender to the heirship of the Shōgun. His reputation as a judge rests on many remarkable and even exaggerated stories. But I am informed that he was an honest and straightforward judge, who always took pains in trying his case lest he might convict the innocent.

In the trial of civil cases the most remarkable rule was what is called *Meyasutadashi*, or preliminary examination. It was the duty of the clerks of the court to examine whether a case was properly made up for trial. They would not mind rejecting the case on a mere technicality of forms. In short, the law and practice became quite as technical, or, if I may use the expression of Sir Henry Maine, quite as "rigid" as in any other system known in the history of law. You will be much surprised to hear that there were half a dozen ways of writing the Japanese words of respect, *On* and *Sama*, which latter is equivalent to the English word Sir or Mr.; and if the poor petitioner did not use the proper word according to the rank of the officer addressed, his case would instantly be dismissed, as once in England a prisoner was acquitted on the ground that the indictment did not state a shoe instead of a pair of shoes, because the prisoner stole only one shoe. Another prominent rule was that judges should try to effect a compromise between contending parties. In a very small proportion of cases was the whole case tried. The court would hear some evidence, but would advise the parties to come to terms. This, too, is a wise rule. But parties would sometimes be forced to go on in order to show the ability of the judge.

In civil and criminal cases the judgments were always written, and some of them were very elaborate, the trial having been conducted with much skill and precision. I heard a case of a dispute concerning the

boundary of a certain piece of land when I was a judge. One of the parties produced as evidence a written judgment of the Tokugawa time to which a survey of the land was attached. The opposite party disputed the reliability of the survey, as having been made two hundred years ago. When a new survey was made upon the European method, the result exactly coincided with the one attached to the judgment.

I will now pass on to the punishments for crimes under the Tokugawa system. The mere mention of their name is enough to illustrate the nature of their severity. Crucifixion, burning, sawing, beheading, and whipping, with other punishments such as transportation, were inflicted upon unfortunate criminals according to the nature of their crimes. Even a Japanese of the present age would hardly believe, when told, that his ancestors employed such cruel methods of punishment.

Such having been the system of law and practice under the Tokugawa Government, the brighter sun of the New Empire begun to shine after the Revolution of 1868. But the revolution of the judicial system did not come all at once, but slowly and steadily. For a short period most of the laws used by the Tokugawa Government were still observed as a matter of necessity. However, the new government was eager to adopt the European system in this, as in other branches of our institutions. In 1870 the Judicial Department, as a separate board, was established, and the late unfortunate, but misguided, Yeto Shinpei was appointed the Minister of Justice. He had a great influence in the Cabinet, and attempted to make reforms on a grand scale. The imperfections and severity of criminal law induced him to pass a new criminal code, which was framed after the Chinese criminal code. All severe punishments except that of beheading were abolished, together with the horrible practice of torture. He employed French and English lawyers as legal advisers. It is said he was so influenced by European ideas of law that he intended to adopt the *Code Napoléon* as the Japanese law. As he was a very energetic man, he might have succeeded in his attempt had he retained office much longer.

A little later on, M. Boissonade, Professor in the University of Paris, was employed as a legal adviser. He was entrusted not only with the teaching of French law, but also with the compilation of civil and criminal codes. The Judicial Department established a law school for the teaching of French law. The Imperial University was not idle, and English law was taught there by English and American lawyers. Some students of these two schools were sent to England, America, and France to complete their studies, and I am one of those who were sent to England.

Between 1870 and 1878 much time was occupied in the preparation of judicial reforms. In the latter year the new Criminal Code and the Code of Criminal Procedure were promulgated. These were framed by M. Boissonade after the French codes. By this new code the capital punishment of beheading was supplanted by that of hanging, which is

inflicted only upon those who are convicted of high treason, murder, and arson. Perhaps the punishment for arson may seem to be too severe; but most Japanese houses being built of wood, fire often has dreadful results. To prevent this, the punishment is still kept in the code, although it is very seldom inflicted, except in cases of a grave nature accompanied with loss of life. I am convinced that it will soon be changed for a milder punishment. Penal servitude, imprisonment with or without hard labour, fines, and certain periods of police supervision are the only other punishments inflicted for other crimes. We have no such corporal punishment as flogging or whipping. Young criminals are sent to reformatory schools in the prisons instead of being punished in the ordinary way. These codes have been since revised, and work remarkably well.

One thing which I may mention in addition is the law relating to duelling. No express mention of duelling is made in our Criminal Code. A few years ago a young man sent a challenge to another, who courageously declined it. The question having been much discussed by lawyers, the government immediately passed a law by which duelling is now forbidden under pain of punishment varying from imprisonment with hard labour to death. Thus, happily, not a single case of duelling has ever occurred in my country.

The Code of Criminal Procedure is almost similar to that of France. The public prosecutor, the examining judge, and the ordinary judge are three principal factors of criminal justice. The prosecution is conducted by the public prosecutor, and the examining judge after examining the case, either commits the prisoner for trial or acquits him. The ordinary judge tries and decides all cases committed for trial. One point which requires particular mention is that the preliminary examination is conducted privately by the examining judge, as in the French system. The reason assigned for this secret examination is this, that unless it is kept secret, necessary evidence may not be forthcoming. But as the law permits the ordinary judge to use at his discretion the written evidence taken down by the examining judge, there is some fear that sometimes injustice may occur. The prisoner is permitted to give evidence, and is examined like a witness both in the preliminary examination and upon trial. The philosopher, Jeremy Bentham, who wrote so much on this subject, would be satisfied with our system.

There are three grades of criminal courts—the Court of First Instance, the Appellate Court, and the Court of Cassation. The Appellate Court is the final court of facts, and the Court of Cassation is the final court of law. The difference between the English system and ours is that we allow an appeal upon questions of fact.

As to civil law and its procedure; it was not until 1891 that any actual reform on a large scale was effected. But it must not be thought that we had no civil law until that time. Even at the time when our criminal law had only assumed a Chinese shape, European principles of civil law had

been freely adopted, and as there was no general written law, judges might adopt these at their discretion, as their *ratio decidendi*. I say "no *general* written law," for there were many written regulations, which already adopted European principles. The progress of civilisation has introduced various transactions hitherto unknown to us, and this naturally made it necessary to pass new regulations. Thus we had regulations for bills and notes, banking, shipping, mining, patents, copyrights, etc., besides an immense quantity of regulations that affected administration.

The drafts of the new Civil and Commercial Codes (though I submit the distinction is rather unscientific, however convenient) had been prepared long before this, and repeated attempts had been made to pass them as law. But the questions which they affected were so wide and grave that the government did not press them, as I think, very wisely. Only with the year 1891 did the time of our great judicial reform arrive. In that year the Civil Code, the Code of Civil Procedure, the Commercial Code, and the Code of the Constitution of Courts were promulgated. Of these, the Code of the Constitution of Courts, the Code of Civil Procedure, and Chapters on companies, partnerships, banking, bills and notes, and registry for trade books in the Commercial Code were put in force, whilst the operation of the Civil Code and main parts of the Commercial Code were postponed until 1894. In the meantime lawyers have been active in examining as to their propriety; and it is no wonder, considering the nature of such voluminous codes, that a great many defects and errors have been found. The consequence is that the Parliament has already passed a law to appoint a committee for their revision. This committee, of which I am one of the members, is now sitting for that work. I am happy to say that England recently took the lead of making a new treaty with Japan, and other countries are now going to follow your just example. Henceforth Japan must undertake a very onerous duty in sight of the civilised world, and for this we must be prepared with good laws.

Now it is quite idle to recapitulate here what is contained in these codes. I will content myself with stating that the Civil and Commercial Codes are very much like the French and German codes, and that the Code of the Constitution of Courts and the Code of Civil Procedure are nearly German.

I will, however, mention some points which may interest the British public on account of the difference from their own procedure.

The constitution of the civil courts is similar to that of the criminal courts. There are three courts—the Court of Cassation, the Appellate Court, and the District Court—besides the courts called Divisional Courts, which have jurisdiction over small matters like your county courts. Three judges sit in the District Courts, five in the Appellate Courts, and seven in the Court of Cassation.

We have no jury system in civil and criminal trials. The jury system has been a great bulwark of liberty in England, and you are justly proud

of it. But in a country like Japan I believe it much safer to leave the trial of fact as well as of law in the hands of experienced judges rather than in the hands of a dozen uneducated men.

One point which I wish to mention particularly is the mode of appointing judges. The position of judges is made secure by the Imperial Constitution, and they are irremovable except by the decision of the Disciplinary Court. But they are not appointed invariably from barristers, but are more frequently appointed from those who are specially educated for that purpose. This is the German method. The candidates must of course pass examinations, one for their legal knowledge and the other or their practical knowledge. It seems to be a very ingenious rule, but I doubt whether experienced and good judges can be obtained in that way. I am happy to mention that the present Minister of Justice lately appointed many judges from barristers—a thing which has seldom happened before.

It is said that the salaries of Japanese judges are very small. I admit that they are small—varying from 400 yen to 5000 yen per annum—if we compare them with the salaries of English judges. But, living in my country being very cheap, the officials are not so badly paid as you think.

I will now make a few remarks on our civil and commercial codes. All commercial transactions being much alike in civilised countries, it is not difficult to adopt European principles. The same thing may be said in civil cases, such as contracts and torts. The most difficult branches are those which relate to land and family relations. We have done away with the feudal system completely, and no such complicated system of tenure remains now. Every owner of land has an absolute property, subject, of course, to the right of eminent domain. The only customs which are the relics of the feudal system are three rights of common—that is, the common of pasture, the common of piscary, and the common of drawing water. These are rights which Japanese farmers have exercised from time immemorial, and are valued so much that it is impossible to abolish them unless we break up our land system. So we must maintain and protect them by law. In other respects it is not so difficult to adopt the advanced principles of property as it was at first supposed.

The reform in the law of family relations need not be difficult. The paternal power is undoubtedly great in my country, and filial duties to parents are considered the greatest of all duties; hence the consent of parents is required for the marriage of their children. Still, change is steadily taking place in our customs, and no educated parents would make objections to the free marriage of their children, except when a young couple would rush into a hasty marriage, which will in the future cause misery and unhappiness. Marriage with the deceased wife's sister, which has been the subject of so much discussion in England, is tolerated. It is said that the number of divorced is very great in Japan. It is very great, but this is on account of the freedom of divorce which married parties can obtain if they

are mutually agreed. Otherwise the court would never allow divorce except on the grounds enumerated in the Civil Code, which are not very different from those of any European law. The only institution that is firmly established is adoption. The family name is so much revered in my country that it is necessary to have the institution of adoption to keep up an unbroken succession of the family name. In short, the provisions which are contained in the Civil Code as to family relations may fairly be put into execution, however they may seem difficult to the European mind.

I shall now refer to our legal education. The Imperial University has, ever since its establishment, been very active in the matter of legal education. Since the new codes came out attention has been mainly directed to the study of the principles contained in these codes. Still, the English, German, and French laws are taught there by native and foreign professors. It has already produced several hundred graduates in law. Some of these have also established private law schools, where thousands of students are now prosecuting their studies.

Lastly, I come to my own profession. The profession of barrister was entirely unknown in the time of the Tokugawa Dynasty and for some time after the Revolution. Parties were obliged to conduct their cases themselves or through their relatives. Gradually those who were not relatives appeared in courts as such in order to undertake the task for remuneration. These fictitious relatives were considered to be a class of dangerous persons, and were much dreaded by the name of *Kujishi*, or suit-makers. However, the reform of our judicial system made it necessary to have the profession. As early as 1881 a regulation was passed by which an examination was made obligatory for the qualification of admission to the bar. This examination was at first very easy, although perhaps not so easy as the keeping of terms by eating dinners. Gradually, with the progress of legal education, the examination for the bar has attained an equal footing with that of the Imperial University, which, I think, may compete with examinations conducted in any university in Europe or America. I may add that there is no such distinction of professions as between barristers and solicitors. All legal business is transacted by barristers only.

INJURIES BY DOMESTIC ANIMALS.

[*Contributed by* E. O. S.]

All animals are by nature wild, and primitive man had probably a hard struggle to escape extinction among them. He saved himself, partly at all events, by making allies instead of outlaws of the most serviceable of the brute creation—the dog, the horse, the cow, the goat. Tamed by degrees and domesticated, these have, under the protecting care of man, lost for the most part their primitive wildness or fierceness; but the original nature is not extinct—it is only in abeyance, and from time to time it breaks out and inflicts damage. These misdoings of domestic animals fall, broadly speaking, into two classes: (i) Injuries done by mischievousness—by biting, butting, kicking, tossing, or any other of the modes of offence or defence by which nature has armed animals for the struggle of existence; and (ii) Injuries —far more venial—done by trespassing or straying. In these cases the law has to adjudicate on the owner's or master's responsibility; and the various views of nations on this responsibility—for domestic animals are common to all alike—furnishes an instructive chapter of comparative law.

Roman law seems to have been at some difficulty how to bring animals—*res se moventes*—logically into its system. It had, however, the slave to serve as a guide, and this analogy it followed pretty closely. A slave could not commit a delict, but he could do an act which if done by a freeman would be a delict. In such a case the quasi-delict was called *noxia*. So with an animal: it could not do an *injuria* proper, for it lacked sense; but it could commit what was called *pauperies*—that is, damage done without *injuria*. For this the XII. Tables gave an action—*actio noxalis*—if it was a quadruped (*si quadrupes pauperiem fecisse dicetur*, D. 9, 1, 1, pr.). If any animal other than a quadruped did the injury, an action was also provided by the Prætor (*utilis actio*, D. 9, 1, 4). But what is observable is that this provision in the XII. Tables applied only to domestic animals as they may be called, not to wild animals. "It applies," say the *Institutes*, "to those animals only that are stirred up contrary to the nature of their kind; for if they are wild beasts by blood, the action is void. If therefore a bear escapes from its owner, and then does harm, his former owner cannot be sued, for he ceased to be owner when the wild beast escaped." Here, by the way, English law parts

company with the civil law; for how did the keeper of the wild beast come to let it escape? The distinction, however, taken above between *genitalis feritas* and occasional misbehaviour is cardinal to the Roman law on the subject. The tiger, when he did damage, was only acting *secundum naturam*—it is his nature to; the ox, on the contrary, was acting *contra naturam*—that is, contrary to his second or better nature, superinduced by domestication. Against the one—the wild beast—a man would be on his guard; with a peaceful domestic animal he would be off his guard if it suddenly kicked or gored him. This seems the rationale of the distinction.

The redress prescribed by the XII. Tables for damage caused by a quadruped was reparation or forfeiture ("deditio")—that is to say, the owner might hand over the horse or the ox just as he might a slave or a son who had committed a wrong. This is a common resource of archaic law "Here is the offender," says the owner; "take him and do what you like with him." It is a kind of rude justice, prompt and simple. A similar rule obtained under the Solonian Constitution, according to Plutarch: Εγραψε δὲ βλαβῆς τετραπόδων νόμον ἐν ᾧ κύνα δάκοντα παραδοῦναι κελεύει κλοιῷ τετραπήχει δεδέμενον (Sol., p. 91 E). And the law of England is stated in Fitzherbert's *Natura Brevium*, 89 L. note (*b*) (supposed to be edited by Lord Hale), to be the same: "If my dog kills your sheep, and I freshly after the fact tender you the dog, you are without remedy" (7 Edw. 3, Barr. 290). This would be all very well if the dog were a valuable collie for instance, but not if it was only a cur of low degree, still less if it was of a vicious nature or suffering from rabies. The principle of "deditio" has now no place in the law of France, that law expressly excluding the power of abandoning the animal for redress of the damage it has caused (*Droit Civil* [Toullier] XI. 401).

In France the liability for animals' damages is defined by Art. 1385 of the Code Napoleon: "Le proprietaire d'un animal et celui qui s'en sert pendant qu'il est a son usage est responsable du dommage que l'animal a causé, soit qui l'animal fut sous sa garde soit qu'il fut egaré ou echappé." No distinction, it may be noted, is here drawn corresponding to that of *secundum naturam* and *contra naturam* in Roman law, or of *feræ naturæ* and *mansuetæ naturæ* in our own; both are included. The terms of liability, too, seem very wide, but they have been much restricted by the judicial construction put on the article. Thus damage to be the subject of redress must be the result of some "faute ou d'une imprudence." If it is not due to that cause, it is only the sort of thing that every one must take the risk of. The article raises a presumption of blame against the owner of the animal, but it does not prevent such owner rebutting the presumption by evidence that he was not to blame; and to do this he need not show that it was a pure accident. It is sufficient if he proves that he did everything "pour empêcher le dommage." If, for instance, a servant is leading a quiet horse, and it is frightened by a noise such as the sawing of wood, and kicks a passer-by, the owner is not liable (*Droit Civil* [Laurent]

XX. 675). He displaces the *primâ facie* presumption of liability by disproving negligence. Provocation of the animal is another element. By Roman law no action lay if the animal was irritated or roused (Paul Sent. 1, 15, 1), nor does it by French law. The Article does not apply to game.

The law of Portugal is substantially the same as that of France: "Tout proprietaire dont les animaux ou les choses causent un prejudice à autrui est tenu de reparer le dommage ainsi causé a moins qu'il prouve qu'il n'y eu de sa part ni faute ni negligence"; and the law of Russia corresponds. By that law the owner of a dog which has bitten a person must, whether he knew the dog to be dangerous or not, compensate the injured party for the damage. If the owner knew the dog to be dangerous, he may be fined in addition an amount not exceeding about £20 in English money. Neither here nor in the law of France, it will be observed, is there any trace of the "scienter" doctrine as affecting civil liability any more than in Roman law. The "scienter" doctrine seems rather to belong to the ruder and more independent Germanic race. That race, with all its theoretical respect for the sacredness of the person, has never been very squeamish about a little roughness or over careful to protect people. It prefers that people should learn to protect themselves. Dogs, cows, and horses were part of the primitive household, harmless enough, generally speaking; and if they occasionally did damage, the neighbours must put up with it as they would with the mischievousness of children. At a time when, as Blackburn, J., says, cattle were left to wander about open commons, the fact that bulls sometimes toss people was not thought enough to make their owner liable, unless there was something more—something to show a *mens rea*—knowledge of a mischievous propensity and neglect of precautions.

The germ of the scienter doctrine may be found in the Mosaic law (Exod. xxi. 28-31): "If an ox gore a man or woman, that they die: then the ox shall be surely stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit." This seems a combination of the "deodand" and the "deditio" doctrines. "But" (the text goes on) "if the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman; the ox shall be stoned, and his owner also shall be put to death. If there be laid on him a sum of money, then he shall give for the ransom of his life whatsoever is laid upon him." Here the compensation principle—bot—damages—enters on scene.

This Mosaic ordinance is incorporated into the laws of Alfred, with the necessary readjustments—that is, the lord is to be slain, or the man paid for, as the witan decree to be right. "If the ox," says the law, "gore a son or daughter, let him (the lord) be subject to the like judgment. But if it gore a 'theow' or a 'theawmennen,' let XXX shillings of silver be given to the lord, and let the ox be stoned. If an ox wound another man's ox, and it then die, let them sell the live ox, and have the worth in common and

also the flesh of the dead one." This last provision argues considerable shrewdness.

The ox here is typical, it must be remembered, of a certain class of animals. English law has from the first drawn a distinction between animals *feræ naturæ* and animals *mansuetæ naturæ*. In the former category came not only what is usually understood by wild beasts proper—lions, tigers, bears, and wolves—but such animals of uncertain temper as the elephant, camel, and monkey. Under the latter category animals *mansuetæ naturæ* or domesticated —the ox, the dog, the pig, the goat. The distinction is of course an artificial one—natural history was not the strong point of the sages who matured our common law—but it embodies a convenient classification, and it corresponds roughly with the classification in Roman law of animals that act *secundum naturam* and *contra naturam*. In the case of a dog, for instance, as Lord Holt says in Mason *v.* Keeling (12 Mod. 332), the law takes notice that it is not of a fierce nature, but rather the contrary : so of a horse or a cow.

Having adopted this classification into animals *feræ naturæ* and animals *mansuetæ naturæ*, our law takes up a high line respecting those *feræ naturæ*. It does not indeed make it unlawful for a man to keep them, but if he does keep them he keeps them at his peril, and no amount of care in the keeping will exempt him from liability should the wild beast escape and do mischief. "I am not sure," said Lord Bramwell, "whether if a man kept a tiger, and lightning broke his chain and he got loose and did mischief, that the owner would not be liable." At all events the act of God, and the act of God alone, will excuse. This doctrine of insuring safety has been criticised by text writers and disclaimed in America, but in England it is too well established by the highest authority (Rylands *v.* Fletcher, L. R. 3, H. L. 330) to be altered by anything short of an Act of Parliament.

The attitude of our law towards the other class of animals—animals *mansuetæ* or *mansuefactæ naturæ*—is quite different. In their case the law only holds the owner liable if he knew or ought to have known of the animal's mischievous propensity. The earliest formal statement of the law is in 1 Dyer R. 162 : "If a man have a dog which has killed sheep, the master of the dog, being ignorant of such quality and property of the dog, shall not be punished for that killing; otherwise, if he have notice of the quality of the dog." This is what is commonly called the scienter doctrine, and the principle of it is very lucidly explained by Lord Cranworth in Fleeming *v.* Orr (2 Macq. H. L. Sc. 14, at p. 23) : "The reason why by the English law," says that learned judge, "it is necessary to allege and prove the scienter is that in the case of an animal *mansuetæ naturæ* the presumption is that no harm will arise from leaving it at large. Starting from that presumption, it follows that there cannot be blame or negligence in the owner merely from his allowing liberty to an animal which has not by nature the propensity to cause mischief. Blame can only attach

to the owner when, after having ascertained that the animal has propensities not belonging to his race, he omits to take proper precautions to protect the public against the ill consequences of these anomalous habits; and therefore, according to the English law, it is necessary to aver and prove this knowledge on the part of the owner. But after all, the culpa or negligence of the owner is the foundation on which the right of action against him rests, though the knowledge of the owner is the medium, and the only medium, through which we in England arrive at the conclusion that he has been guilty of neglect; and in that sense it is said that the scienter is the gist of the action." This has been popularly paraphrased by saying that every dog is entitled to his first bite; but, like other popular statements of the law, this is not quite accurate. It is not necessary, that is, to show that the dog delinquent has actually bitten another person before it bit the plaintiff. It is enough to show that the dog has to the knowledge of its owner evinced a savage disposition by attempting to bite, straining at its chain, and so on (Worth *v.* Gilling, L. R. & C. P. 1; Charlwood *v.* Greig, 3 C. & K. 48). If the owner has warned a person to beware of the dog lest he should be bitten, or ties him up by way of precaution (Jones *v.* Perry, 2 Esh. 482; and see Renwick *v.* von Rotberg [2 of Session Cases, 4th Series, 855]), this is evidence to go to a jury in support of the allegation that the dog was accustomed to bite. The dog-owner offering compensation is no proof that he knew the dog to be mischievous (Beck *v.* Dyson, 4 Camp. 198), though it may be some slight evidence of knowledge (Thomas *v.* Morgan, 2 C. M. & R. 496). So in the case of a bull, the owner knowing the beast's antipathy to red, may fix him with the scienter in an action by a man with a red tie who has been tossed (Hudson *v.* Roberts, 6 Exch. 697).

This obligation on the plaintiff's part to bring home knowledge to the owner of the offending animal constitutes a very real practical objection to the scienter doctrine. True, it is not imaginable, as Holt, C.J., says, that a man should keep a fierce dog in his family unwittingly; but the unlikelihood of the owner not knowing will not suffice; nor is it any proof of knowledge that the dog belonged to a fierce breed (mastiff or blood-hound), otherwise it would convert dogs of these breeds into animals of a *feræ naturæ*, which the owner would keep at his peril. So much unredressed wrong, indeed, did the scienter doctrine do in the case of sheep-worrying that it was abolished as regards sheep and cattle, in Scotland by 26 & 27 Vict., c. 100, and in England by 28 & 29 Vict., c. 60. By the English Act the owner of every dog is made liable in damages for injury done to any cattle or sheep by his dog; "and it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in such dog, or the owner's knowledge of such previous propensity, or *that the injury was attributable to neglect on the part of such owner.*" In the Scotch Act the italicised words are absent. "Cattle" here includes horses, hitherto only known as such in the pages of the sporting novel. Germany has also of

late receded from the doctrine. By the older law the owner of a domestic animal which had injured a person was liable only when he knew of the evil propensities of the animal or was negligently ignorant of them; and if the animal was under the care of a keeper or herdsman at the time, the owner was liable only upon proof of negligence.

The Civil Code of 1896 (Art. 734) now, however, provides as follows: "Any one who owns an animal is bound, in fulfilling the duties of a good paterfamilias, to take the measures of watchfulness necessary to prevent the animal causing damage. If this duty is not fulfilled the owner of the animal is bound to make good the damage caused to a third person in accordance with ss. 704, 722–726, 728. The same responsibility rests on any one charged with looking after the animal in the stead or place of the owner."

There is a material difference, it will be noted, between this and the corresponding article of the French code. In the French code the presumption is against the owner of the offending animal. In the German code the onus of proving negligence is on the complainant—an onus not much less troublesome than that of proving the scienter. German law also makes it a penal offence for a man to keep savage or dangerous animals at his home without the permit of the police, or let them wander about without taking precautions, and this is common to other systems of law. An edict of the Roman ædiles forbade the keeping of a dog, a boar, a wild boar, a bear, or a lion where there was a path in common use. By English law a man may keep a fierce watch-dog for the protection of his yard or house, but he is not justified in placing a ferocious dog in the way of access to his house, with such a length of chain that a person innocently going there for a lawful purpose in the daytime may be bitten by it (Sarch *v.* Blackburn, 4 C. & P. 297). In America a householder can only let loose a fierce dog at night as a protection against felony or violence by surprise (Woolf *v.* Chalker, 31 Coun. 121).

American law, as has been already said, does not accept the English doctrine of insuring safety in the case of fierce animals; it requires only special care and precautions (Scribner *v.* Kelley, 38 Barbour N. Y. Sc. 14). But in regard to injuries by domestic animals, it substantially coincides with the English law as laid down in May *v.* Burdett (9 Q. B. 101), emphasising rather more strongly, however, the truth that the keeper of a ferocious dog is not exempted from all duty of restraint until the dog has effectually mangled or killed at least one person (Godeau *v.* Blood, 51 Vermont 251).

A dog's barking may be a nuisance by American law (Britt *v.* Hagler, 23 Wendt 354), but the law of England is not very clear on this point. "It is very disagreeable," as Lord Kenyon observed in Street *v.* Tugwell (2 Selw. N. P. 104), "to have such neighbours" (a kennel of howling pointers), "but we cannot" (there had been a verdict for the defendant) "grant a new trial."

Keeping dogs so as to be a nuisance or injurious to health is now provided for by s. 91 of the Public Health Act, 1875.

Straying and trespassing—the other class of injuries by animals—belong to the period of defined and settled boundaries. In a nomadic state, if Abraham and Lot find their herdsman at strife, the whole land is before them; they can separate and go, one east and the other west. The oldest legislation on this subject is to be found in the code of Manu. "Let the owner of the field," says the Hindoo sage, "enclose it with a hedge of thorny plants, over which a camel could not look, and let him stop every gap through which a dog or a boar could thrust his head (viii. 239). Should cattle attended by a herdsman do mischief near a highway, in an enclosed field, or near the village, he shall be fined a hundred panas, but against cattle which have no keeper let the owner of the field secure it."[1] Looking at the height of the camel and the well-known capacity of the boar for getting through obstacles (Child *v.* Hearn, L. R. 9, Ex. 176), this injunction seems certainly exacting, but like all laws it must be judged by reference to the state of society existing at the time—the condition of the country: and, in a primitive community, self-help in the shape of self-protection is the prevailing law. In England, as in France and Germany, the onus is now just the other way. Instead of requiring the owner of a field to surround himself with a lofty and impregnable fence, and so ward off intruders, it casts on the owner of cattle the obligation of keeping them from straying on to a neighbour's land (Ellis *v.* Loftus Iron Co., L. R. 10, C. P. 10; Saunders *v.* Teape, 51 L. T. 263[2]). If they do, he—the cattle owner—is liable for any such trespass, and to have his cattle distrained, *damage faiseant*, unless the neighbour has a fence and has neglected to keep it in repair. Thus in Lee *v.* Riley, where a mare strayed from off the defendant's land on to the plaintiff's through the defective condition of the defendant's fences, and kicked the plaintiff's horse, the defendant was held liable; and no proof of the scienter is necessary in such a case.

But England is an old country—long enclosed, densely populated; and what may be practicable and convenient in one place and stage of national development—in the India of Manu—may be impracticable and highly inconvenient in another. The transitional stage is well illustrated in the America of to-day. In some of the States the English rule is adopted, that if through neglect of the owner to maintain proper fences a horse strays into the field of a neighbour, and there kicks a neighbour's horse, the owner is liable for the damage. But in most, if not all, of the Western and Southern States the common law rule, says Mr. Irving Browne, has been so far modified or abrogated as to allow cattle to range at will without liability of their owners to actions of trespass unless the lands trespassed on were enclosed by good fences (Morris *v.* Fraker, 5 Colorado 425; Seeley *v.* Peters, 11

[1] Some animals possessed a special immunity—a cow before ten days since her calving, bulls kept for impregnation, and cattle consecrated to the deity, whether attended or unattended; for damage done by these, Manu ordained no fine.

[2] This law is as old as the Year Books (see *per* Brian, C.J., 20 Ed. IV. 11, Pl. 10).

Illinois 130). In Macon Railway Company *v.* Lester, 30 Georgia 914, the court said: "Such a law as this—'of trespass by cattle'—would require a revolution in our people's habits of thought and action. A man could not walk across his neighbour's unenclosed land, nor allow his horse or his hog or his cow to range in the woods, nor graze on old fields or 'old wire grass,' without subjecting himself to damages for a trespass. Our whole people, with their present habits, would be converted into a set of trespassers."

But no law has gone so far as to require a landowner to fence for the protection of his neighbour's straying cattle. Consequently, if A's animals stray into B's unfenced land, and fall into an open quarry, or eat a poisonous plant, or are killed by the falling of a stack, B is not answerable. Looking, however, at the liberty which the law of England allows the domestic animal, prudence may well dictate fencing for a man's own protection *a fortiori* if his land adjoins a highway. Tillett *v.* Ward (10 Q. B. D. 17) illustrates the inconvenience to which a shopkeeper may be put by the uninvited entry of an ox from the highway. In the matter of trespassing there is a difference, founded on good sense, between an ox or a horse and a dog. Large animals like horses and oxen may do great damage; not so a dog. If the master of a dog knows it to be of a mischievous nature and given to chasing game, and the dog enters a wood and destroys game, he will be liable (Read *v.* Edwards, 17 C. B. N. S.); but a dog's trespassing is, generally speaking, trivial and no justification for shooting or poisoning him. "A dog," as Lord Ellenborough said in Vane *v.* Cawdor (11 East 568), "does not incur the penalty of death for running after a hare on another man's ground; and the same is the law in America, even though the delinquent has a bad record (Dodson *v.* Mock, 4 Dev. & Batt. 146).

In France it would seem, under the Rural Code, the owner or occupier of land may kill domestic fowls—"des volailles de quelque espèce que ce soit qui causent le dommage"—hens, ducks, geese, or turkeys—but only if he catches them in the act of committing damage "au moment du dégât."

The Dogs Act, 1871, now empowers constables to apprehend savage or dangerous dogs straying on any highway and not under control.

To sum up the matter, our scienter doctrine is become an anachronism, answerable for a good deal of injustice, and might very well be parted with. But the dog owner and the horse owner—the persons whom the doctrine unduly favours—to say nothing of the owners of other animals, represent in this country a formidable force of public opinion, which will have to be reckoned with by any intending legislator. If we are to choose our law France seems best to have hit the *juste milieu* in raising a presumption of liability against the owner of an animal which has done any damage, unless such owner displaces the presumption by proving no fault on his part. He keeps the animal for his pleasure, profit, or protection, and in such a case the maxim may fairly be applied: "Qui sentit commodum sentire debet et onus."

SOME NOTES ON NEUTRALITY.

[*Contributed by* JOHN MACDONELL, ESQ., C.B.]

A REMARKABLE change with respect to the beginning of warfare has taken place in recent times. It was once the custom to precede hostilities with a formal declaration of war. In modern times this custom is no longer invariably observed. Hostilities often begin without any formal notice; and according to modern writers on international law there is nothing irregular in this. On the other hand, in this country and in several others it has become the practice for neutrals, whenever a war breaks out, to publish a proclamation of neutrality. In this country, at all events, such a proclamation imposes on subjects, speaking broadly, no duties by which they would not be bound in the absence of a proclamation: the object is to warn persons of the consequences of committing breaches of the neutrality laws; perhaps also to prove to the world the desire of the government to be impartial. This practice is admitted to be comparatively modern, but I have found no clear statement of its origin. In the collections of State papers which I have consulted there is no such proclamation of earlier date than the sixteenth century. There is none, so far as I can find, in Rymer, for example, nor is any such in Leibnitz's collection, entitled the "Codex Juris." The conception of strict neutrality comes late; its possibility appears to have been doubted in some ages, and it is for a long time regarded only as a right to be bargained and paid for. It is probably true that even in the beginning of the seventeenth century "neuter," "neutral," and "neutrality" had a connotation of reproach. When Bacon writes of the "foul calumny of neutrality," and Shakespeare asks, "Who can be temperate and furious, loyal and neutral in a moment?" they are thinking of the duty of making election as to the merits of every quarrel. Manning in his work on international law and Dr. Geffcken[1] refer to many treaties in the Middle Ages containing stipulations of neutrality in the event of any of the parties to the treaties being at war with other nations. But each case was considered on its merits.[2]

[1] *Handbuch des Völkerrechts* 4, 617.

[2] Sir Edward Littleton, in his argument in the Shipmoney Case (3 St. Tr., p. 930), says: "It is a Droit Royal to meddle with war and peace. Subjects have nothing

A complete history of the growth of the modern notions of neutrality would be a very laborious task. I do not pretend to do more than note here a few stages in the evolution of the present form of proclamation which has grown up gradually. In this country proclamations of neutrality originated with the Privy Council. Exercising a wide, ill-defined legislative jurisdiction, civil and criminal, as to matters affecting the commonwealth, it from time to time enjoined subjects not to take part in hostilities between other countries. For example, with reference to the war between France and Spain is the following entry in the register of the Privy Council in 1551 :—

"Lettres to all the Portes, commaunding the Justices and other officers there not to suffer any violence or wrong to be don within any theyr jurisdictions by themperialles to the Frenche or by the Frenchemen to themperours subjectes, notwithstanding the present warre and hostilitie that is betwene them."[1]

Another entry in the same year contains the germ of a well-known rule of international law (p. 369) :

"A lettre to the Capten of thile of Wight to take such ordre that nether the Imperiall nor French ships be suffered to lie in awayt there for to robbe or spoyle eche other, but that in respect of the Kinges Majesties amitie with both Princes, he doo so that the subjects of nether syde do attempt thother's annoyance within any his Majesty's portes or creekes there, but see the same preserved inviolate."

The following entry is interesting (p. 466) :—

"A lettre to Mr. Dudley, willing hym to looke substantially to the preservacion of the neutralitie betwene themperialles and Frenche uppon all the Kinges Majesties limites within his charge, using such meanes as he can best devise for thapprehencion of those that shall attempt to violate the same ; whom yf he can cume bee in caase they be Inglishmen serving either or both parties, to cause them to be put under sure warde, and advertise hither thereof that ordre may be gyven for theyr execution ; or yf they be subjectes to themperour or Frenche King to se them safely kept that they may be punisshed as appertaineth."

With the aid of the Earl of Crawford's index to the proclamations, I find that proclamations such as the following become pretty frequent from the reign of Henry VIII. to that of Charles I. :—Proclamations declaring the king's neutrality in the quarrels of France and Germany (Henry VIII., 1536) ; proclamations against serving foreign princes as soldiers or sailors (Elizabeth, 1575); forbidding the issuing of letters of marque against Spain or Portugal (1546); against carrying munitions of war to Algiers or Tunis

to do with it." (Rot. Parl. 13 Ed. III. M. 5, 19 Ed. IV., fol. 160 or 6.) "Brian, Chief Justice, saith that if all the subjects of England do war with the subjects of another Kingdom, this is no war ; but if the King denounce it, it is war." Probably lawyers from the fifteenth century onwards believed that it was within the royal prerogative to prevent subjects from taking part in hostilities against friendly states. There are excellent remarks on the subject of "Neutrality in the Middle Ages" in *Beiträge zum Kriegsrecht im Mittelalter*, von Dr. Albert Levy, p. 76.

[1] Acts of Privy Council, 1550-52, p. 365.

(James I., 1623); proclamation declaring that all ships carrying corn or other victuals, or any munition of war to or for the King of Spain or any of his subjects shall be, or ought to be, deemed lawful prize (Charles I., 1625); proclamation ordering seamen in the service of foreign princes to return home (Charles I., 1634).

The following are two of the earliest proclamations of a modern type. The first, issued by Charles II., and dated May 17th, 1676, is as follows:—

"WHEREAS complaints have been made to his Majesty by the Ministers of several Princes and States now in amity with his Majesty, that divers of his Subjects have lately taken commissions from some Princes and States now in Amity with his Majesty, to serve at Sea against others, who are likewise his Majesties Allies; His Majesty, for the preservation and continuance of friendship and Amity between Him and His respective Allies, doth by this His Royal Proclamation (with the Advice of his Privy Council) strictly Prohibit and Forbid all his subjects whatsoever to take any Commission at Sea from any Foreign Prince or State, against any other Foreign Prince or State now in Amity with His Majesty their Vassals or subjects, or by vertue or colour of any such Commission already taken or hereafter to be taken to set out, or imploy any ship or Vessel of War, or to serve as Mariners or Seamen in any Ship or Vessel which shall be imployed against any Prince or State now in Amity with His Majesty, their Vassals or Subjects, during the present War. And all His Majesties Subjects are required to take notice of this His Royal Command, and to conform themselves to the same, as they tender His Majesties high displeasure, and upon pain of being punished with the utmost severity of Law and Justice."

The principal passages of the other proclamation, dated May 26th, 1676, are as follows:—

"Our Royal Will and Pleasure therefore is,

"1. That within our Ports, Havens, Roads and Creeks, as also in every other Place or Tract at Sea, that may be reasonably construed to be within any of those Denominations, Limits or Precints, there shall be an inviolable Truce and Cessation of all hostilities between all persons and parties whatsoever; and that no Force, Violence, Surprize or Offence shall be done therein either from Man of War to Man of War, or from Man of War to Merchant, or from Merchant to Merchant, that happen to be in hostility the one against the other, but that all of what Nation or Party soever, so long as they shall be within Our Ports, Harbours or other Places reputed to be within Our more immediate protection, and where Our Commanders and Officers are accomptable for the publick Peace, shall be understood to be under Our special safe conduct, and must keep the Peace inviolably each with other. And we do further declare, and hereby denounce, that the Ships and Goods of all Aggressors, Actors and Offenders whatsoever against the true meaning of this Our Ordinance and Proclamation shall be *ipso facto confiscate* and proceeded against in Our High Court of Admiralty to Sentence and Condemnation according to Law, notwithstanding any Commission of War or Letters of Reprizals such Offenders may have or pretend to have for their justification.

* * * * *

"5. And we do further straitly command and require all governors and officers in ports and other maritime places, not to suffer any private man of war, sayling by a foreign commission, and having any prize or prizes (that he may have taken) in his power or possession, to stay above twenty-four hours in any of our ports or harbours, unless he be thereto constrained by contrary winds, blocking up by enemy, or other distress; yet so, that during his stay he do not break bulk, sell, barter, or leave behind him any of his prize goods, etc.

"6. We do straightly Require and Command; That none of our Subjects of what degree or condition soever, do presume to buy, contract or deal with any Foreign Men of War, their Officers or Company, or with any other person coming from Sea, not being a known Merchant for any Wares, Merchandises, Victuals, Ammunition, Tackle, Furniture, Provisions or Goods whatsoever (not brought in by the course of Merchandise and the customs and Duties upon them first paid) upon pain of forfeiting all such Wares and Goods as *Bona Piratarum* ought to be, and of being further proceeded against and punished in Our High Court of Admiralty as Abettors and Complices of Pirats and as Receivers of Pirats and their Goods ought to be, by the Laws and Customs of the Sea in that behalf."

* * * * *

In the same year was issued a further proclamation (May 17th, 1676), strictly prohibiting English subjects from taking any commission at sea from any foreign prince or state against any other prince or state which was in amity with His Majesty.[1]

Such proclamations were exceptional; nowhere when war broke out between two states does it appear to have been regarded as the plain duty of all other governments to declare their neutrality.

In the middle or end of the seventeenth century it was not uncommon to stipulate in treaties for a strict observance of neutrality. For example, the treaty between Oliver Cromwell and Christina, Queen of Sweden (1654), stipulates that the countries shall not "harbour or assist each other's enemies" (Art. II.).[2] The convention between Denmark and the city of Hamburg in 1782 stipulates for "a complete and exact neutrality." A proclamation of William and Mary (May 7th, 1689) declaring war against the French king, makes it a grievance that he was invading our American possessions, when at that very time "he was negotiating here by his Ministers a Treaty of Neutrality and good correspondence in America."

No doubt the Treaties of Munster, Westphalia, and Utrecht strengthened the idea of a natural and established political order in Europe, which it was improper to disturb by irregular warfare. But the greatest change on this subject was brought about by the armed neutrality of 1780. Whatever opinion may be formed as to the merits of the controversy then raised, the famous declaration of the Russian Government educated opinion; it gave

[1] A proclamation of October 10th, 1692, for recalling and prohibiting seamen from serving of foreign princes or states adds as a reason, "in this time of war when there is occasion to use men of their sort or calling."

[2] Jenkinson's *Treaties* i. 69, and i. 82.

expression to the rights of neutrals in a way that had never before been done. Of such rights Frederick the Great, Voltaire, Rousseau, and, later, Franklin and John Quincy Adams were ardent advocates; and to their influence is due the insertion in treaties of provisions mitigating the cruelties of war and protecting the interests of non-combatants. A further advance was made by Washington, Hamilton, and Randolph.[1]

War having broken out between France and Great Britain, French privateers were fitted out in American ports. Washington called the attention of the secretaries of state to these preparations; and he also sent to members of his Cabinet a circular letter containing sixteen questions, drafted by Hamilton, relating to the proper conduct of the United States as a neutral power One of these was the question, "Shall a proclamation issue for the purpose of preventing interference of the citizens of the United States in the war between France and Great Britain?" All present agreed that a proclamation should issue; and the following proclamation was published :—

"Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain and the United Netherlands on the one part and France on the other; and the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial towards the Belligerent Powers, I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those Powers respectively; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever which may in any way tend to contravene such disposition. And I do hereby also make known that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing aiding or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further that I have given instructions to those officers to whom it belongs to cause prosecutions to be instituted against all persons who shall within the cognizance of the United States, violate the law of nations, with respect to the Powers at war or any of them."

Two remarks may be made on this proclamation. The word "neutrality" is not used; it was omitted because there was a difference of opinion in the Cabinet as to whether the executive was competent to declare neutrality, one view then prevalent being that it rested with Congress to declare alike war and neutrality. It may also be noted that at the time when the proclamation was issued, there was no statute relating to the subject—the first American Foreign Enlistment Act was passed in 1794. The legal advisers of the Government had no doubt as to the authority of the executive to do independently of that statute most things which it expressly sanctioned. The rules adopted by the Cabinet on August 2nd, 1793, as to

[1] For a list of such treaties, see Winsor's *History of the United States* vii. 83.

the equipment of vessels of war, were substantially the same as the provisions of the Act passed in the following year.

The modern form of proclamation in this country was modelled on that issued on November 27th, 1817. It prohibited British subjects from taking part in the struggle then going on between Spain and her South American Colonies. It contained no reference to fitting out armed vessels. Differences of opinion existed as to the right of the Crown to issue such a proclamation—differences revealed in the discussion in Parliament of the Foreign Enlistment Act of 1819. Lord Lansdowne contended "that the active interference of British subjects in the service of foreign states was not inconsistent with the doctrines of neutrality."[1] On the other hand, Mr. Scarlett argued that "The exportation of war-like stores could be prevented by a proclamation from the Crown; but it was requisite to apply to the two Houses of Parliament before a British subject could be prevented from employing his talents and his services in whatever quarter of the globe he chose." Sir James Mackintosh laid it down as a clear right on the part of the king to regulate the intercourse of his subjects with belligerent powers: "That right had been well asserted by the Royal Proclamation in 1817, disobedience to which was a misdemeanour, punishable as such by the Common Law." "As His Majesty's Proclamation of 1817[2] was still in force, how could any legislative measure be necessary in this country?"

Of late years proclamations have not merely inculcated in general terms the duty of neutrality, they have also set out the principal sections of the Foreign Enlistment Acts; before the Act of 1870, ss. 2, 7, and 8 of the Act of 1819; since the passing of the Act of 1870, the whole or the substance of the latter Act. The chief peculiarity of the proclamation issued on the outbreak of hostilities between the United States and Spain is, that it not only recites the Foreign Enlistment Act, but also the three rules of the Washington Treaty.

The Foreign Office has published a collection of the proclamations of neutrality issued by various governments on the occasion of the outbreak of the war between the United States and Spain; and in the consular reports of the United States there is a similar collection. From these collections it appears that all the principal countries of the world, with one exception published proclamations of neutrality—the German Government published no such proclamation. The following explanation of the course taken by Germany is given in an extract from the *Cologne Gazette*, quoted in the Foreign Office papers:—

"Various papers maintain that American Government circles are irritated because the German Empire has issued no Declaration of Neutrality. We doubt whether there is good ground for the statement in question. There is no obligation

[1] Hansard, June 28th, 1819, p. 1402.

[2] A search kindly made at the Record Office by Mr. Hubert Hall has failed to discover any opinion of the Law Officers of the Crown in regard to this proclamation.

on neutral States to issue a Declaration of Neutrality. It stands to reason that all States that are not directly concerned in a war count as neutrals, and have to fulfil the duties of neutrals in order to claim neutral rights. This has always been the point of view of the German Government, and accordingly Germany issued no Declaration of Neutrality either in the case of the Russo-Turkish war, or of Chinese-Japanese war, or of the Turkish-Greek war. A formal Declaration of Neutrality is not allowed for under German Imperial law. But, nevertheless, neutrality has been strictly observed in Germany, especially by the shipping class. For instance, the Hamburg-American Line issued orders the moment war was declared to put on shore all articles that might come under the category of contraband of war which were contained in the cargoes of their ships."

Most of the recently published proclamations are distinguished by one peculiarity; they use vague, general language; they inculcate the duty of preserving neutrality in terms which leave many elementary questions obscure. With the exception of what may be called the Anglo-American type of proclamation and that issued by Brazil, they do not enter into detail. For example, the French proclamation enjoins all citizens not to contribute to the equipment or armament of a vessel of war. What conduct is included within such words, whether the neutrality enforced would be stricter than that required by the United States law of 1818, or our own law, is left uncertain. Nor in most countries can this difficulty be cleared up by reference to any statute or ordinance; in most states it would seem that the executive or the courts of law are left with wide discretionary powers.

A second comment to be made is this: it is customary for certain of our colonies to issue separate proclamations. This is not done in the case of all colonies. Some, however, habitually do so. What is still stranger is the fact that the forms of proclamation in use in the colonies differ. For example, the Governors of Malta, Jamaica, and Bermuda issued, on the outbreak of the war with Spain, proclamations which differed materially from each other and from those published here.

The Bermuda proclamation, which is expressed in general terms, does not refer to the Foreign Enlistment Act; and the rules as to the conduct of other vessels of belligerent powers in English waters are couched in language different from that used in the proclamation issued in England.

None of the proclamations, with the exception of that issued by Great Britain, refer to the famous three rules of the treaty of Washington. No nation has hitherto formally adopted those rules, and no other nation has thought fit to mention them in any proclamation of neutrality. The proclamation of the Brazilian Government is remarkable in several ways. It enunciates no fewer than twenty-three rules dealing minutely with the duties of neutrals. Some of these rules are stricter than any which have been promulgated here. For example, Rule 4 states that "the export of warlike articles from the ports of Brazil to those of either of the two belligerent Powers, whether under the Brazilian flag or that of any other nation, is absolutely forbidden." Apparently also under the Danish law "to transport

contraband of war for any of the belligerent Powers, or to hire or charter steamships which appear to be intended or could be turned to such usage, is an offence punishable with imprisonment or fine." The proclamation of the Netherlands also prohibits "the exportation of arms, ammunition, or other war materials to the belligerents. In this must be included the exportation of everything ready for immediate use in war, but not of unmanufactured articles, unless these are chiefly made up for warlike purposes."

In some of the proclamations a distinction which may one day be commonly accepted is drawn. Rule 7 of the regulations for the observance of neutrality laid down by the Brazilian Government withholds from privateers certain privileges granted to regular vessels of war. When convoying prizes, the latter are not permitted to remain in Brazilian ports or bays for more than twenty-four hours, unless they are driven to do so by force or stress of weather. But, except in certain specified cases, "privateers, although not escorting prizes, shall not be admitted into the ports of the Republic for more than twenty-four hours." The Japanese Government mark their disapproval of privateering by declaring that "No privateer shall be allowed to come within the territorial waters of the Empire"; and the proclamations of Denmark and Portugal are to the same effect.

The proclamations show a general agreement on the subject of the supply of coal to belligerent cruisers. The rule laid down in almost all cases is that the neutral is to supply a belligerent vessel with no more coal than is requisite to take the vessel to the nearest port of its own country, or to another nearer destination. On this point, however, a few proclamations are not very explicit. The Brazilian proclamation states (Rule 11) that "the ships of the belligerent shall take in only fuel to enable them to continue their voyage." The proclamation of the Republic of Colombia limits the quantity to that which is "strictly necessary to complete the voyage to the nearest foreign port." Some of the proclamations state that no further supply is to be given until after an interval of three months. The Brazilian rule is: "a ship which once takes in fuel in our ports shall not be allowed a fresh supply until a reasonable time has elapsed, such as may make it possible for the ship to have returned after accomplishing her voyage to a foreign port." One peculiarity in the Brazilian proclamation may be noted: Rule 5 deals with a set of circumstances likely to be often found in future wars, but not adverted to in other proclamations. "Nationals and foreigners residing in Brazil are forbidden to announce by telegraph the departure or expected arrival of a vessel, whether a merchantman or ship of war, belonging to belligerents, or to give them any orders, instructions, or information calculated to the prejudice of the enemy."

On the whole, the proclamations show a gradual approach to a uniform neutrality law, conceived on the lines which America and England first struck out.

MODES OF LEGISLATION IN THE BRITISH COLONIES: WESTERN AUSTRALIA.

[*Contributed by* The Hon. Mr. Justice J. C. H. James.]

In August, 1895, Lord Herschell, the President of the Society, in a letter to Mr. Chamberlain, Secretary of State for the Colonies, enclosed a series of questions by means of which it was sought to obtain information respecting the common and statute law of the several colonies, the methods of legislation, the publication, revision, and consolidation of statute law, and matters connected therewith. These questions were transmitted by Mr. Chamberlain to the respective Colonial Governments.

The first instalment of the replies received from the Colonial Office was published in the first number of the Journal (vol. i., pp. 134-190), the second instalment in the second number (vol. i., pp. 358-385), the third instalment in vol. ii., pp. 258-298. Since then the replies now printed have come to hand. It will be found that a large number of the Colonial Governments have responded to the invitation to forward replies, and it is hoped that the replies still outstanding will be forwarded in time for insertion in the next number of the Journal.

The questions addressed to the Colonial Governments, and the answers received, were as follows :—

QUESTIONS WITH RESPECT TO THE STATUTE LAW OF THE BRITISH COLONIES.

WESTERN AUSTRALIA.

I.—Common Law as the Basis of Statute Law.

What is the common law of the colony? Under what circumstances and by whose authority was it introduced?

That of England. It was introduced on the foundation of the colony in 1829.

Is there any law applying exclusively to particular races or creeds?

A portion of the statute law applies exclusively to the aborigines: their testimony, punishments, contracts, protection, and land reserves. Certain enactments control Indian and Chinese labour.

II.—Statute Law.

Of what does the statutory or enacted law of the colony consist? To what extent is it embodied in Charters, Regulations, Orders in Council, Ordinances, or Acts?

The enacted law consists of Ordinances from 1832-1871, Acts of Council from that year to 1890, and Acts of Parliament from that date. No Charters. Some Regulations. Orders by the Queen in Council and by the Governor in Executive Council.

To what extent do the Statutes of the United Kingdom operate to the colony by virtue of either—

(i) *Original extension of English law to the colony;*

(ii) *Express provisions of any Order in Council or Charter; or*

(iii) *Express adoption by the Legislature of the colony?*

(i) and (iii) With the exception of those relating to usury, all Statutes of the realm of a general nature in force on June 1st, 1829, take effect in Western Australia as far as applicable. The Colonial Legislature has since that date enacted many Statutes which embody the whole or parts of Imperial Statutes, and has adopted others by reference, while others, again, have been "made applicable."

(ii) Not by Charter, but certain Orders by the Queen in Council, have expressly applied to the colony certain Imperial Acts.

Is the statute law of any other colony in force in the colony? (*This may happen where one colony has been severed from another.*)

Acts of the Federal Council of Australasia only.

Is any code or other body of enacted law of non-British origin in force in the colony?

None.

III.—Methods of Legislation.

By whom are drafts of legislative measures prepared? Is there any official draughtsman? If so, by whom is he appointed, to whom is he responsible, and what are his staff and duties? Do his duties extend to measures introduced by private or non-official members of the legislative body?

By various persons—viz., the Attorney-General, a minister, or by a private member. There is now an official draughtsman appointed by the Governor in Council on the recommendation of the Attorney-General, to whom he is responsible. He has no staff, and his duties are indeterminate. They do not extend to measures introduced by private members.

What is the constitution of the legislative chamber or chambers through which measures have to pass? (*A reference to statute law or charter or order in council, or to any recognised text-book will suffice.*) *If there are two chambers, may measures be introduced in either?*

A double chamber system on the Imperial model (refer to Con-

stitution Acts). Measures may be introduced in either chamber, but those dealing with finance in the lower chamber only.

Are draft measures published before introduction or before any other stage? If so, under what rules?

No, not as a rule since the introduction of responsible government.

Through what stages does a measure pass before it becomes law?

Through the same stages as in the Imperial Parliament.

Is any opportunity afforded for referring measures while in course of passage through the Legislature to any special officer or committee on points of form?

None beyond those in use in the Imperial Parliament. The Governor can return a Bill for amendment as often as he likes (see Standing Orders, 327-329).

Have any steps been taken to secure uniformity of language, style, or arrangement of Statutes either by means of a measure corresponding to "Brougham's Act" (13 & 14 *Vict., c.* 21) *or to the Interpretation Act,* 1889 (52 & 53 *Vict., c.* 63), *or by official instructions or otherwise?*

Only to the extent of two "shortening" Ordinances, the later of which became law in 1853.

Is there an annual session of the Legislature? Are there any fixed or customary periods of session?

Yes. These are not fixed; the customary periods are from July to November.

How are the Acts or Ordinances of the colony numbered or distinguished? Are they numbered by reference to the calendar year or to the regnal year, or in any other way? Is it the practice to confer for convenience of citation a "short title" on each Act or Ordinance? How long has this practice been followed?

By number of the regnal year; thus, "60 Vict., No. 24." A short title is usually, though not universally, conferred on each statute.

Are private Bills (if any) treated separately and under different conditions from public Bills? On what principle is the line drawn between public and private Bills? Are private Acts or Ordinances separately numbered?

Yes, the Imperial practice and principle being followed. Private Bills bear no number.

Does any practice exist of accompanying a measure on its introduction by an explanatory memorandum?

No.

IV.—Publication of Statutes.

In what manner and under what authority are Statutes promulgated? What evidence is accepted of a Statute having been duly passed?

By notification in the Government *Gazette.*

(1) Under the hand of the Colonial Secretary, on the assent of the Governor.

(2) Under the same hand on receipt of despatch from the Secretary of State conveying Her Majesty's assent. A copy purporting to have been printed by the Government printer is accepted as evidence of the passing of a Statute.

In what form or forms, and under what authority, are Statutes printed for publication?

In the form as attested by the Clerk of Parliaments.

Are the Statutes of each session published in a collected form at the end of the session?

Yes, or shortly thereafter.

Are the periodical volumes of Statutes accompanied by (1) *an index and table of contents;* (2) *a table showing the effect on previous legislation?*

(1) Yes; (2) yes.

What collective editions (*if any*) *of the statute law of the colony have been published, and whether by the Government or private enterprise? Are these or any of them periodical? Do such editions comprise those Acts of the United Kingdom in force in the colony?*

Up to the year 1882 there was no collective edition. In that year a revised edition, arranged by subject-heads, was published under the direction of a committee. There is no periodicity in the issue of editions. In 1896 a reprint or revised edition in chronological order of the laws in force, exclusive of those relating to appropriation and supply, together with a chronological table, was edited by the writer, and published under authority by Spottiswoode & Co.; also a volume containing the adopted Imperial Statutes, these last never having been promulgated within the colony save by reference of title.

Is there any edition of "Selected Statutes" corresponding to Chitty's "Statutes of Practical Utility"?

No.

How are private Acts published?

In like manner as public Acts.

V.—Revision of Statutes.

Have any steps been taken for the revision and expurgation of the statute law, whether periodically or otherwise? What machinery (*if any*) *exists for this purpose?*

This seems to be covered by the answers to the questions in Part IV.

Is there any edition of "Revised Statutes" showing those actually in force? If so, under what authority is it prepared and published, and what is the date of the latest edition? Is it published at periodical intervals, or how otherwise? Are the contents arranged alphabetically, chronologically, or on any other principle?

The answers to Part IV. almost cover this question. The latest

revised edition was published early in 1896. The whole of the unrepealed law is contained in that edition and in the volumes of 60 Vict. (1896) and 61 Vict. (1897).

VI.—Indexing of Statute Law.

Is there any general index to the statute law of the colony? If so, on what principle is it arranged, and after what interval is it revised? Does it include both public and private Acts or Ordinances and the Statutes of the United Kingdom which are in force in the colony? Is it accompanied by any table showing how each Statute has been dealt with? What is the date of the latest edition?

Yes. It is arranged under alphabetical heads, revised at the end of the Parliamentary Session, and bound up with the volume of the year. It is done gratuitously by the writer of this paper, and accepted. It includes both public and private Acts. Such tables are included within the same binding. The latest edition accordingly is in the 1897 volume, published in 1898.

VII.—Consolidation and Codification.

What steps have been taken to consolidate the whole or particular parts of the statute law, or to codify any branches of the law? Does any machinery exist for the purpose? Is the work now in progress?

Consolidation of the whole law has not been attempted. A move has, however, been made in this direction of late by consolidatory measures relating to certain matters, such as customs, companies, the law of partnership, municipalities, the numerous enactments relating to coasting vessels and passengers, the law of marriage, registration of births, deaths, and marriages, and the transfer of land Acts. Much, however, still remains to be done on these lines; *e.g.*, there are eleven railway Acts, nine licensing Acts, eight fishery Acts, and as many Supreme Court Acts. There is no express machinery for this purpose.

What "codes" are now in force in the colony? When and by whom were they prepared, and on what materials were they based?

None.

VIII.—Subordinate Legislation.

What official or other machinery exists for the preparation, passing, or promulgation of measures of subordinate legislation such as rules or orders made by the Governor or a minister or department under the express authority of Statute or Ordinance? Is there any and what collection of or index to such subordinate measures?

Such measures appear in the annual Blue Book, but are nowhere to be found collected together as a whole, so as to be readily referred to. A table of Proclamations, Orders in Council, and Regulations up to the end of 1894 will be found in the index volume of the 1896 edition of the Statutes.

A FEW LEGAL FACTS FROM GERMANY.

[*Contributed by* Julius Hirschfeld, Esq., of 14, Old Square, Lincoln's Inn.]

In giving a summary outline of the judicial organisation of the work being done and the forms of civil procedure in Germany, I propose to confine myself strictly to a statement of the salient points, and to refrain from any comparison with the English system or any critical comments, partly because the two systems stand out in such striking contrast to each other that a direct comparison, as between incommensurable quantities, would be out of the question: partly because I feel that whatever conclusions could be drawn might be more competently dealt with by the readers of this short article than by myself.

I therefore proceed at once *in medias res*, commencing with some statistical facts as they appear from recent publications.

The total number of German courts of law is 2127, of which 1926 are local courts, 172 district courts,[1] 28 courts of appeal, and one Imperial Court of Final Appeal.

The number of judges of the local courts is 4598, that of the district courts 2456, of the courts of appeal 580, of the Imperial Court 84, so that the total number of judges is 7718.[2]

The number of actions brought in 1895 amounted to 3,728,284, in which the local courts participated with about 3,500,000, the district courts with 220,000.

From every 1000 judgments there were 215 appeals to the district courts, 409 to the courts of appeal, 185 to the Imperial Court.

As regards the results of appeals, statistics have only been taken of the appeals to the Imperial Court, and they show that 26 per cent. of the judgments appealed against were reversed.

[1] These act as courts of appeal in respect of decisions of the local courts.

[2] In addition to these, Bavaria has a Supreme Court of Appeal, with eighteen judges. There are altogether 6149 advocates in actual practice, and 646 public prosecutors, who must have qualified in the same manner as the judges.

In 1895 the duration of *lis pendens*—*i.e.*, from the time of commencement of the action to the passing of judgment—was in the local courts:

Less than 3 months	63 per cent.
„ „ 3 to 6 months	22 „ „
„ „ 6 to 12 months	11 „ „
„ „ 1 to 2 years	2 „ „
„ „ 2 years or more	0·5 „ „

In the district courts:

Less than 3 months	24 per cent.
„ „ 3 to 6 months	28 „ „
„ „ 6 to 12 months	29 „ „
„ „ 1 to 2 years	13 „ „
„ „ 2 years or more	4 „ „

The lapse of time between the notice of appeal and the judgment in the court of appeal was:

Less than 3 months	16 per cent.
„ „ 3 to 6 months	29 „ „
„ „ 6 to 12 months	32 „ „
„ „ 1 to 2 years	17 „ „
„ „ 2 years or more	4 „ „

In the Imperial Court:

Less than 3 months	11 per cent.
„ „ 3 to 4 months	21 „ „
„ „ 4 to 6 months	34 „ „
„ „ 6 months or more	22 „ „

The local courts have jurisdiction in all matters up to £15, and in such minor matters where a more summary proceeding is indicated, as in certain disputes between landlord and tenant, master and servant, innkeeper and traveller, etc. Other matters fall under the jurisdiction of the district courts; but the parties are at liberty, by way of express or implied agreement, to bring any case, with the exception of those for which an exclusive jurisdiction is provided—as, for instance, matrimonial causes—before the local courts. In the latter, parties may appear in person, whereas in district and higher courts they must be represented by advocates.

An action is instituted by a statement of claim,[1] which has to be served on the defendant. A copy of it must be left at the office of the court. The

[1] In matters belonging to the jurisdiction of local courts the plaintiff may make his statement of claim before a judge's clerk, who draws up a memorandum of it.

judge (in district courts the president of the division which has to deal with the matter) marks it thus: "Date of hearing on the——" inserting the day and hour, and leaving a reasonable margin of time for pleadings (defence, reply, etc.) to be delivered, which in district court matters must be at least a month. The president would then, according to the rules of distribution, assign the matter to one of the divisional judges, who would act as reporter to the court, give his opinions on the case in its various stages in writing, and direct the conduct of it generally. The president also registers his opinion alongside with that of the reporting judge.

The pleadings contain a statement of the facts, the intended mode of proving them, and the applications to the court, to which, in complicated matters, would be added some legal argument. At the date of hearing, after counsel on both sides have stated and argued their cases, the court either gives judgment on the whole or part of the matter in dispute, or decides to take evidence on such points as according to its opinion would be relevant to the decision. If the court resolves upon taking evidence, a day will be fixed for that purpose (unless the court should commission one of its members to take evidence in chambers); and here again, as on the first day, statements and arguments may be brought forward and fresh applications made, which, if admitted by the court, may lead to another adjournment and a new hearing, and so forth.

An adjournment always takes place if the parties agree on such; if not, the court decides whether, and on what terms respectively, it is to be ordered. Of the whole of the proceedings at the hearings a "protocol" is taken by the Clerk to the court, in which any essential *nova* in the statements and declarations of the parties, as well as the drift of the witnesses' evidence, are registered.

As regards the law of evidence it is especially to be noted that parties cannot be witnesses in their own cause, but that oaths on particular points can be deferred and referred by one party to the other, if he has no other evidence to produce, and places confidence in the honesty of the opponent, or relies on the latter's dread of a prosecution for perjury.[1] The court may also pass a conditional judgment making the determination of the case dependent upon a certain party swearing a certain oath, as formulated by the court. Such oath will be entrusted to the party who has furnished partial, though in the opinion of the court incomplete, evidence on a point on which the judgment is to turn.

The time for giving notice of appeal is one month. A senate of the Court of Appeal consists of five members. The advocates practising before them are specially appointed. The Court of Appeal, after hearing counsel, may order fresh evidence to be taken.

A revision of a judgment—*i.e.*, an appeal to the Imperial Court—apart

[1] There were in 1895 3250 persons indicted for offences relating to oaths, of whom 1747 were convicted.

from claims which have no determinate money value, is only admissible in cases where the amount in dispute amounts to £75 and above, and can only be founded on the allegation of a violation of the law. A senate of the Court of Revision consists of seven members.

In addition to the above ordinary remedies against a judgment, there are two extraordinary remedies—viz., the action of nullity and the action of restitution; the former, generally speaking, where any one of the fundamental principles of the law has been violated (*e.g.*, where a party was not duly represented, or where a judge was related to one of the parties, so that he might have been challenged by the other had he been aware of it); the latter, if the judgment was brought about by unlawful means (*e.g.*, the false oath of a witness or party, or some other incident affecting the determination—*i.e.*, the absence of a document, subsequently found).

There are special proceedings provided for matrimonial matters and for matters of account, and summary proceedings for cases which rest solely on documentary evidence or on bills of exchange.

The costs—court fees as well as counsel's fees—are entirely regulated on the basis of the value of the subject matter in dispute. I will give a few instances for their calculation as prescribed by the law.[1]

In a litigation for the value of £15, which would in the first instance come before a single judge of a local court, the court fees would be:

	Court of 1st instance.	Court of 2nd instance.	Court of Revision.
The trial	11*s.* 0*d.*	13*s.* 7*d.*	16*s.* 6*d.*
If evidence ordered to be taken	11*s.* 0*d.*	13*s.* 7*d.*	16*s.* 6*d.*
Fee for judgment	11*s.* 0*d.*	13*s.* 7*d.*	16*s.* 6*d.*
Taxation of costs	3*s.* 3*d.*		

In a litigation for £600, before a District Court with three judges:

	Court of 1st instance.	Court of 2nd instance.	Court of Revision.
The trial	£5	£6 5*s.*	£7 10*s.*
If evidence ordered to be taken	£5	£6 5*s.*	£7 10*s.*
Fee for judgment	£5	£6 5*s.*	£7 10*s.*

In a litigation for £2500:

	Court of 1st instance.	Court of 2nd instance.	Court of Revision.
The trial	£14 10*s.*	£18 2*s.*	£21 5*s.*
Evidence	£14 10*s.*	£18 2*s.*	£21 5*s.*
Judgment	£14 10*s.*	£18 2*s.*	£21 5*s.*

[1] Acts of June 18th, 1878, and July 17th, 1879.

The advocates' fees,[1] in a litigation for £15 :

	Court of 1st instance.	Court of 2nd instance.	Court of Revision.
Fee for instruction	10s.		13s. 0d.
,, trial	10s.	Fees	13s. 0d.
,, trial after evidence being taken	15s.	the same as in	19s. 6d.
In case of a compromise ...	10s.	court of	13s. 0d.
Attending the taking of evidence	5s.	1st instance.	6s. 6d.

In a litigation for £600 :

	Court of 1st instance.	Court of 2nd instance.	Court of Revision.
Fee for instruction ...	£3 12s.		£4 13s.
,, trial	£3 12s.	Fees	£4 13s.
,, trial after evidence being taken ...	£5 8s.	the same as in	£7 0s.
In case of a compromise	£3 12s.	court of	£4 13s.
Attending the taking of evidence	£1 16s.	1st instance.	£2 6s.

In a litigation for £2500 :

	Court of 1st instance.	Court of 2nd instance.	Court of Revision.
Fee for instruction ...	£7 7s.		£9 11s.
,, trial	£7 7s.	Fees	£9 11s.
,, trial after evidence being taken	£11 0s.	the same as in	£14 6s.
In case of a compromise	£7 7s.	court of	£9 11s.
Attending the taking of evidence ...	£3 13s.	1st instance.	£4 15s.

The curriculum of aspirants for the legal profession is this: they have to pass the final examination at a public school, which qualifies them for the universities. At the latter they are taught the theory of the law; and at the end of three years' study are admitted to a legal examination, after the passing of which they are appointed "referendar" and attached to one of the courts,

[1] It is true that the above fees are sometimes exceeded by means of express agreement. But such departures from the legal tariff are only exceptional and occur almost exclusively in great commercial centres, where big interests are at stake, or in patent matters, where a special knowledge apart from a lawyer's is required. The courts do not approve of heavy fees, and the excess over the legal fees would of course not be included in the compensation of the winning party, which otherwise would in all cases be in full.

to be employed in the preparatory service for a course of four years, during which they are made familiar with all the various functions of the judges and advocates, and trained in their exercise. Having acquitted themselves satisfactorily in the preparatory work, they are admitted to a final examination. If successful at this very comprehensive and stiff test of their capacity and knowledge, they are appointed "assessors" to the court, and may then either apply to be entered in the list of advocates or wait till they get their appointment as judges, being meantime mostly employed as auxiliary judges.

REVIEW OF THE LEGISLATION OF THE BRITISH EMPIRE IN 1897.

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I. UNITED KINGDOM.[1]

[*Contributed by* Sir Courtenay Ilbert.]

Acts passed—Public General, 67; Local, 260.

Local Government.—The Local Government Act, 1897 (c. 1), makes the provisions of the Local Government Act, 1894 (Parish Councils Act), more elastic by enabling the parish meeting to be held any time in March, and by providing that residence begun on or before Lady Day in any year is to qualify for election at parish council elections in the following year.

Elementary Education.—The Voluntary Schools Act, 1897 (c. 5), provides for an annual aid grant out of the taxes to what are called voluntary schools—*i.e.*, public elementary schools not provided by school boards. The aid grant is not to exceed 5*s.* per scholar for the whole number of scholars in those schools, and is to be distributed by the Education Department to such voluntary schools and in such manner and amounts as the Department think best for the purpose of helping necessitous schools and increasing their efficiency, due regard being had to the maintenance of voluntary subscriptions. The formation of associations of schools is encouraged by enabling the Education Department to allot to any association with an area and representative governing body approved by the Department a share of the aid grant computed according to the number of scholars in the schools, with room for a variation between the rates for town and for country schools, and also any balance which may be available out of the aid grant after distribution to unassociated schools. The share allotted to an association is to be distributed by the Education Department after consulting the governing body of the association and in accordance with a scheme prepared by that body and approved by the Department. A school may be excluded from a share in the aid grant if, in the opinion of the Department, it unreasonably refuses or fails to join an association.

S. 2 of the Act abolishes what used to be known as the 17*s.* 6*d.* limit on the parliamentary grant. Under the Act of 1870 the annual parliamentary grant for a school was not to exceed the income of the school derived from other sources, such as subscriptions and fees. This limitation was removed by the Act of 1876, which provided that the annual

[1] The Session 60 & 61 Vict. ended on August 6th, 1897.

parliamentary grant to a school might amount to 17*s.* 6*d.* per child in average attendance at school, but was not to exceed that amount per child except by the same sum by which the income of the school derived from other sources exceeded that amount per child. This limit is now removed, and thus the annual parliamentary grant from taxes does not in any way depend on the amount raised by subscription or derived from other sources.

S. 3 exempts from local rates any land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof.

The Elementary Education Act, 1897 (c. 16), increases the amount of aid which may be given out of the taxes to certain board schools under the provisions of s. 97 of the Elementary Education Act, 1870.

The Education (Scotland) Act, 1897 (c. 62), makes for Scotland provisions of a somewhat similar nature to those made for England by cc. 5 & 16.

S. 1 of the Act raises the limit imposed on the relief capable of being granted under s. 67 of the Education (Scotland) Act, 1872, which corresponds to s. 97 of the English Act of 1870.

Under s. 2, for aiding voluntary schools there is to be annually paid out of money provided by Parliament an aid grant equal to 3*s.* per child for the whole number of children in average attendance in those schools, and this grant is to be distributed in accordance with the directions of the Scotch Education Code. "Voluntary school" is defined as a State-aided day school not provided by a school board.

S. 3 exempts voluntary schools from local rates in terms similar to those contained in the English Act.

The School Board Conference Act, 1897 (c. 32), enables a school board to contribute out of the school fund, in accordance with regulations laid down by the Education Department, towards the expenses of school-board conferences.

Military and Naval Works.—The Military Works Act, 1897 (c. 7), authorises a grant for certain military works, such as defence works, barracks, and ranges, and allows the surplus income for the financial year 1896–97, to be applied for the purposes of this grant instead of being applied towards paying off the National Debt. The Naval Works Act, 1897 (c. 35), makes similar provision for certain naval works.

Juries.—Under the Juries Detention Act, 1897 (c. 18), on the trial of any person for a felony other than murder, treason, or treason felony, the court may, if it see fit, allow the jury to separate before considering their verdict as they may separate in cases of trial for misdemeanour. Under the old law they were to be locked up until they agreed.

Companies.—The Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict., c. 62), gave priority over other debts in bankruptcy to rates and

taxes and to certain salaries and wages of clerks, servants, labourers, and workmen. The Preferential Payments in Bankruptcy Amendment Act, 1897 (c. 19), provides that in the winding up of a company these debts, so far as the general assets are insufficient to meet them, are to have priority over the claims of debenture holders under floating charges.

Landlord and Tenant.—The Market Gardeners' Compensation (Scotland) Act, 1897 (c. 22), extends to Scotland the provisions of the corresponding English Act of 1895.

Poor Law.—S. 2 of the Poor Law Act, 1889 (52 & 53 Vict., c. 56), laid down general rules as to the conditions on which guardians of unions and managers of district schools and asylums might borrow. The Poor Law Act, 1897 (c. 29), amends these rules and makes them somewhat more elastic.

Police.—The Police (Property) Act, 1897 (c. 30), enables courts of summary jurisdiction to make orders with respect to the disposal of property which has come into the possession of the police in connection with criminal charges or otherwise in the course of their duties, and enables the Secretary of State to make regulations as to the disposal of unclaimed property in the possession of the police.

Employers and Workmen.—The Workmen's Compensation Act, 1897 (c. 37), has introduced radical changes into the law relating to the liability of employers for injuries to their workmen.

Under s. 1 of the Act, if in any employment to which the Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer is, subject to the provisions of the Act, liable to pay compensation in accordance with the provisions set forth in the First Schedule. This liability arises irrespectively of negligence, but is limited by certain provisos in s. 1, which are in substance as follows :—

(*a*) There is no liability in respect of an injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed.

(*b*) Where the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, the ordinary civil liability of the employer is to remain, and in that case the workman may at his option either proceed under the Act or otherwise ; but, subject to certain restrictions, the employer is not to be liable both independently of and also under the Act, and is not to be liable to any proceedings independently of the Act except in the case of such personal negligence or wilful act.

(*c*) If it is proved that the injury is attributable to the serious and wilful misconduct of the workman, the compensation claimed in respect of the injury is to be disallowed.

The amount of compensation is fixed by the First Schedule, and depends

upon whether the injury results in death or incapacity, and, in cases of death, upon whether the workman does or does not leave persons dependent upon him.

In cases of death—

(*a*) If the workman leaves persons wholly dependent upon his earnings at the time of his death, the amount is to be equal to his earnings in the employment of the same employer during the three years preceding the injury, or £150, whichever is larger, but not exceeding in any case £300. This rule is subject to provisions for deductions of weekly payments during the period between the accident and the death, and for the case of a man being employed by the same employer for less than three years;

(*b*) If the workman leaves persons partly dependent upon him, the amount is to be such as is settled by agreement or arbitration not in excess of the foregoing limits;

(*c*) If he leaves no dependants, the amount is to be the reasonable expenses of his medical attendance and burial, not exceeding £10.

Where the result of the injury is not death, but total or partial incapacity for work, the compensation to the workman is to be a weekly payment during the incapacity after the second week not exceeding 50 per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed; but if not, then for any less period during which he has been in the employment of the same employer, such weekly payments not to exceed £1.

The Schedule contains elaborate rules, which are difficult to summarise within reasonable length, as to the examination of the injured person by a duly qualified practitioner, as to the investment and application of the compensation, as to the review of weekly payments from time to time, and as to their redemption for a lump sum.

If any question arises in any proceedings under the Act as to the liability to pay compensation (which is to include any question as to whether the employment is one to which the Act applies or not) or as to the amount or duration of compensation, the question, if not settled by agreement, is to be settled by a special mode of procedure which is described as "arbitration," and which is regulated by rules set forth in the Second Schedule and supplemented by rules of court and Treasury regulations.

Under S. 2 of the Act proceedings for recovery of compensation are not to be maintainable unless notice of the accident has been given as soon as practicable and before the workman has voluntarily left the employment in which he was injured, nor unless the claim for compensation is made within six months from the accident or, in case of death, from the death. But the want of, or any defect or inaccuracy in, the notice is not to bar proceedings if it is found that it has not prejudiced the employer in his defence, or that it was occasioned by mistake or other reasonable cause.

The section provides for the particulars which the notice is to contain and the mode in which it is to be served.

S. 3 deals with contracting out. If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment is on the whole not less favourable to the general body of workmen and their dependants than the provisions of the Act, the employer may, until the certificate is revoked, contract with his workmen for substituting the provisions of the scheme for the provisions of the Act. Subject to this relaxation, the Act is to apply, notwithstanding any contract to the contrary. No scheme is to be certified if it contains an obligation on the workmen to join the scheme as a condition of their hiring. The Registrar's certificate may be made to expire at the end of a limited period, not less than five years.

S. 4 makes employers in certain cases liable to compensate for accidents to workmen employed, not directly by themselves, but by persons with whom they have contracted.

S. 5 makes the workman's compensation a first charge in the case of the employer becoming bankrupt or being a company and being wound up under the Companies Acts.

It will have been seen that the Act applies only to certain specified employments. These are—employment on, in, or about a railway, factory, mine, or quarry; employment in an "engineering work," which is defined as being any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and including any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used; and employment on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof. In each case the employment must be by the "undertakers" as specially defined in the Act. The Act is not to apply to persons in the naval or military service of the Crown, but otherwise is to apply to employment by or under the Crown, as if the employer were a private person.

Public Health.—The Public Health (Scotland) Act, 1897 (c. 38), is a long and important Act of 196 sections, which consolidates with amendments the laws relating to public health in Scotland.

Post Office.—The main object of the Post Office and Telegraph Act, 1897 (c. 41), was to authorise the reduction in charges which was effected in 1897 at the time of the Jubilee.

Army.—The Military Manœuvres Act, 1897 (c. 43), enables the Queen by Order in Council to authorise the execution of military manœuvres within certain areas and during a specified period, not exceeding three months. Before

any such Order is made, a draft of it must be sent to the local authorities of the area which it affects, and the draft Order is not to be submitted to the Queen until after an address by Parliament praying that it may be made. The effect of the Order is to give the military authorities power within the area to which the Order applies to pass over, encamp, and construct temporary military works and execute military manœuvres on any "authorised" land, and to supply themselves with water from any "authorised" sources of water. The authorisation is to be given by a Military Manœuvres Commission consisting of representatives of county councils and of owners and occupiers of land. There are provisos against any interference with dwelling-houses, places of worship, schools, business premises, farmyards, etc., and the officer in command is to take care that there is no interference with earthworks, ruins, or other remains of antiquarian or historical interest, or with any picturesque or valuable timber, or other natural features of exceptional interest or beauty. Power is given to two justices to close roads for a time not exceeding forty-eight hours whilst the manœuvres are going on. Compensation for damage, unless settled by agreement, is to be assessed by a compensation officer appointed by the Military Manœuvres Commission with the concurrence of the Treasury, and is to be made out of public money. There are penalties for unlawfully obstructing the manœuvres and similar offences.

Weights and Measures.—The Weights and Measures (Metric System) Act, 1897 (c. 46), legalises the use of metric weights and measures in trade, provides for the keeping of metric standards, and enables the Queen by Order in Council to make a table of metric equivalents.

Dangerous Performances.—The Children's Dangerous Performances Act, 1879 (42 & 43 Vict., c. 34), imposed restrictions on the employment of children under fourteen in certain dangerous performances. The Dangerous Performances Act, 1897 (c. 52), extends these provisions to boys under sixteen and girls under eighteen.

Congested Districts.—The Congested Districts (Scotland) Act, 1897 (c. 53), establishes a body of Congested Districts Commissioners, and constitutes a Congested Districts Fund, which may be applied for the improvement of congested districts in the highlands and islands of Scotland. The money may be applied for aiding and developing agriculture, dairy-farming, and the breeding of livestock and poultry, providing seed potatoes, seed oats, and implements and dairy utensils, and machinery or appliances for the making of butter or cheese for crofters and cottars, providing land for subdivision among them or for enlargement of the holdings of crofters and cottars, aiding migration of crofters and cottars, aiding and developing fishing, aiding the provision or improvement of lighthouses, piers, or boat-slips, public roads, and bridges, etc., and aiding and developing spinning, weaving, and other home industries, and, with Treasury consent, aiding the provision or improvement of harbours.

Water.—The Metropolis Water Act, 1897 (c. 56), empowers the Railway Commissioners to hear and determine complaints against the Metropolitan Water Companies.

The District Council (Water Supply Facilities) Act, 1897 (c. 66), enables a landowner, with the consent of the Board of Agriculture, to charge his land with the cost of supplying water to a village.

Infant Life Protection.—The Infant Life Protection Act, 1897 (c. 57), supersedes and re-enacts with modifications the Infant Life Protection Act, 1872 (35 & 36 Vict., c. 38), which was directed against the abuses of baby-farming. It requires notice to be given by persons who receive for hire infants for the purpose of maintenance, provides for the appointment of local inspectors, enables the local authority to fix the number of infants which may be retained by the same person, and provides for the removal of infants improperly kept, and for proper notice to coroner of the death of any infant.

Factories.—The Cotton Cloth Factories Act, 1897 (c. 58), gives the Secretary of State further power of making regulations for the protection of health in cotton cloth factories.

Merchant Shipping.—The Merchant Shipping Act, 1897 (c. 59), enables ships to be detained for being undermanned in like manner as they may be detained for being unsafe.

Chaff-Cutting Machines.—The Chaff-Cutting Machines (Accidents) Act, 1897 (c. 60), requires the feeding mouths of chaff-cutting machines to be fitted in such manner as to secure safety, and their fly-wheels and knives to be securely fenced.

Prison-made Goods.—The Foreign Prison-made Goods Act, 1897 (c. 63), enables the Commissioners of Customs to prevent the importation of goods proved to their satisfaction by evidence tendered to them to have been made or produced wholly or in part in any foreign prison, gaol, house of correction, or penitentiary, unless they are goods in transit or not imported for the purpose of trade, or are of a description not manufactured in the United Kingdom.

Land Transfer.—The Land Transfer Act, 1897 (c. 65), has made extremely important alterations in the real property law of England.

Part I. of the Act, which came into operation on January 1st, 1898, establishes a "real representative," by providing that real estate shall, like personal estate, pass on death to the executor or administrator, instead of passing directly to the devisee or heir. The new law does not, however, alter the devolution of a beneficial interest in land, so that in cases of intestacy real estate will continue to devolve according to the law of primogeniture and not in accordance with the Statutes of Distribution.

Part II. of the Act makes several important amendments in the Land Transfer Act, 1875, which provides for the registration of title to land.

S. 6 adapts the machinery under this Act to the registration of settled land.

S. 7 provides for the indemnification of persons suffering loss by reason of any error or omission in the register, or of any entry made or procured by or in pursuance of fraud or mistake. The person in possession is not to be dispossessed, but the register is to be rectified, and the person suffering loss from the rectification is to be indemnified. For the provision of indemnity payable under the Act there is to be established (s. 21) an insurance fund, to be raised by setting apart at the end of each financial year such portion of the receipts from fees taken in the Land Registry Office as the Lord Chancellor and the Treasury by order determine. The solvency of this indemnity fund is guaranteed by the Consolidated Fund.

S. 12 deals with the controversial question as to how far title by possession is to prevail against a registered title. It enacts that a title to registered land adverse to or in derogation of the title of the registered proprietor is not to be acquired by any length of possession, and the registered proprietor may at any time make an entry or bring an action to recover possession of the land accordingly. But where the effect of the Act is to prevent a person from obtaining a title by possession he may apply for an order for rectification of the register. And there is a proviso that the section is not to prejudice, as against any person registered as first proprietor of land with a possessory title only, any adverse claim in respect of length of possession of any other person who is in possession at the time of the registration.

The other amendments contained in this part of the Act of 1875 are of comparatively less importance.

Part III. of the Act enables the Queen by Order in Council to make registration of title to land compulsory in any county or part of a county. The effect of the Order is to prevent any person from acquiring by any subsequent conveyance on sale the legal estate in any freehold land in the area to which the Order applies, unless or until he is registered as proprietor of the land. Before any such Order is made six months' notice must be given to the council of the county to which it is proposed to apply the Order, and if a majority at a meeting of the county council, at which two thirds are present, pass a resolution against the making of the Order, it is not to be made. An Order has been made under this section making the registration of title to land compulsory on sale in the county of London. The Order is to come into operation gradually. It is to apply in Hampstead, St. Pancras, St. Marylebone, and St. George's, Hanover Square, as from September 1st, 1898, but is not to apply to the city till July 1st, 1900.

Supreme Court.—The Supreme Court of Judicature (Ireland) (No. 2) Act, 1897 (c. 66), provides for the fusion and amalgamation of the Exchequer Division and Probate and Matrimonial Division of the High Court in Ireland

with the Queen's Bench Division, and for the union and consolidation of the Court of Bankruptcy with the Supreme Court in Ireland.

1. ISLE OF MAN.

[*Contributed by* Sir Courtenay Ilbert.]

Seven Acts of Tynwald appear to have been passed in 1897.

Married Women.—The Married Women's Property Protection Act, 1897, adopts with modifications the provisions of the English Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict., c. 39).

Clergy.—The Clergy Residence Act, 1897, repeals the Act against non-residence which was passed by the Court of Tynwald in July 1697, and makes further provision against absenteeism by incumbents of benefices.

By another Act the Legislature has amended the Ecclesiastical Residences and Dilapidations Act, 1879.

Advertisements.—The Advertising Rate Act, 1897, authorises the appointment of an "advertising committee," with power to administer "advertising funds," for the purpose of giving increased publicity to the advantages of the island as a pleasure and health resort. The rate for the purpose of this fund is to be raised, oddly enough, as part of the lunatic asylum rate.

II. BRITISH INDIA.

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

[*Contributed by* Sir Courtenay Ilbert.]

Acts passed—16.

Criminal Tribes.—The Criminal Tribes Act, 1871, gave large powers of controlling, breaking up, and otherwise dealing with the criminal tribes of Northern India, such as the Meenas, who live by the practice of dacoity and other crimes. This Act is confined in its operation to Bengal, the North-West Provinces with Oudh, and the Punjab. The Criminal Tribes Act Amendment Act, 1897 (No. 2), amends this Act in certain particulars—*e.g.*, by enabling the children of criminal tribes to be removed from their parents and placed in reformatories—and gives power for the local Government, with the approval of the Government of India, to extend the Act to other parts of British India. It was stated in the discussions on the Bill that provisions of this kind were much needed in Sindh.

Epidemics.—The Epidemic Diseases Act, 1897 (No. 3), is, as its name

indicates, a plague measure. Under it the Government of India, if satisfied that India or any part of India is visited by, or threatened with, an outbreak of any dangerous epidemic disease, and if of opinion that the ordinary provisions of the law are insufficient, may take or authorise the taking of such measures, and prescribe by public notice such temporary regulations as may be deemed necessary to prevent the outbreak or spread of disease, and may determine the mode in which the consequential expenses are to be defrayed. These measures and regulations may deal with the inspection and detention of vessels and their passengers, and the inspection and segregation of railway passengers. The powers exercisable under the Act may also be delegated to local Governments.

Fisheries.—The Indian Fisheries Act, 1897 (No. 4), prohibits the destruction of fish by means of explosives or by poisoning of waters.

Statute Law Revision.—The Repealing and Amending Act, 1897 (No. 5), is a measure of the same kind as those known in England by the name of Statute Law Revision Acts. It repeals in similar terms enactments which have been superseded or have otherwise become obsolete.

Negotiable Instruments.—The Negotiable Instruments Act Amendment Act, 1897 (No. 6), illustrates the reciprocal action of the English and Indian Legislatures. The English Bills of Exchange Act, 1882,—a measure of codification of which Mr. Chalmers (now law member of the Governor-General's Council) was the draftsman,—was suggested by the Indian Negotiable Instruments Act, 1881, and the Indian Act has since then been amended more than once to bring it into closer conformity with the English Act. The object of the Act of 1897 is to effect this assimilation with respect to a single point—namely, the case where the bank on which a cheque is drawn fails. Mr. Chalmers has suggested that it might be for the convenience of the mercantile community simply to adopt the English Act, which has been adopted as part of the mercantile law in many parts of the British Empire.

Emigration.—The Indian Emigration Act Amendment Act, 1897 (No. 7), makes a small amendment in the Indian Emigration Acts for the purpose of facilitating emigration to Sarawak.

Reformatory Schools.—The Reformatory Schools Act, 1897 (No. 8), repeals and re-enacts with a few modifications the Reformatory Schools Act, 1876.

Provident Funds.—The Provident Funds Act, 1897 (No. 9), deals with provident funds—that is to say, funds in which the subscriptions or deposits of any class of employees are received and held on their individual accounts,—by facilitating payments on death, and by protecting from attachment by courts of justice compulsory deposits in any Government or railway provident fund.

Interpretation.—The General Clauses Act, 1897 (No. 10), supplies another instance of the interaction of English and Indian legislation. The provisions

of the English Interpretation Act, 1889, were to a great extent suggested by the provisions of the Indian General Clauses Act, 1868, and of a supplemental Act of 1887. The Indian Act of 1897 now repeals the Acts of 1868 and 1887, and substitutes a more extensive Act, some of the provisions of which are taken from the English Interpretation Act, 1889.

Coinage.—The Bhopal Coinage Act, 1897 (No. 11), is a measure which arose out of the closing of the Indian mints in 1893. Bhopal is one of the Indian native states which has retained the right of coinage. One result of closing the Indian mints was that rupees issued by the native mints for use in native territories were depreciated by comparison with the appreciated British rupee. Under these circumstances the Begam of Bhopal has undertaken to make the current silver coin of the Government of India the only silver coin legally current in Bhopal; and the object of the Act of 1897 is to facilitate this arrangement by giving power to supply rupees from the Indian reserve in exchange for the Bhopali rupees, which are to be called in. The Finance Member of the Governor-General's Council hopes that this may be the beginning of a unification of coinage throughout India, including the Native States.

Local Loans.—The Local Authorities (Emergency) Loans Act, 1897 (No. 12), is another measure which has arisen out of the recent famine and plague troubles in India. It enables local authorities to borrow on the security of their funds for the giving of relief and the establishment and maintenance of relief works in time of famine or scarcity, and for the prevention of the outbreak or spread of any dangerous epidemic disease.

Short Titles.—The Indian Short Titles Act, 1897 (No. 14), is an Act of the same character as the English Short Titles Act, 1896, and gives short titles to a large number of Indian Acts.

Contagious Diseases.—The Cantonments Act, 1897 (No. 15), repeals the Act of 1895, which prohibited the making of any regulation giving legal sanction to prostitution.

Courts.—The provisions of the Oudh Courts Act (1891) Amendment Act, 1897 (No. 16), were necessitated by the appointment of a third Judicial Commissioner for Oudh.

2. MADRAS.

Acts passed—4.

Municipalities.—The Madras District Municipalities Act Amendment Act, 1897 (No. 3), amends in a large number of particulars the Madras Act of 1884.

Survey and Boundaries.—The Madras Survey and Boundaries Act, 1897, authorises the survey of Government lands, and empowers a survey officer to fix the boundaries of land so surveyed. The Act also provides for the settlement of boundary disputes in other cases.

3. BOMBAY.

Acts passed—3.

Infants.—Under the Government of India Act (VIII of 1870) for the prevention of murder of female infants, certain funds have been accumulated by fines levied in the districts of Kaira and Ahmedabad. The Bombay Act (No. III of 1897) authorises the application of these funds for the educational benefit of the Lewa and Kadva Kunbi castes. The Act was passed in exercise of the power recently given by the Indian Councils Act, 1892, under which local Legislatures may, with the previous sanction of the Governor-General, amend Acts of the Governor-General of India in Council.

4. BENGAL ACTS.

Acts passed—5.

Public Demands.—Act No. 1 amends in various details the Public Demands Recovery Act, 1895.

Prisoners for Debt.—Mrs. Sally Murray, of Calcutta, by her will made in 1844 left some money to be applied for obtaining the release from custody of persons deserving of or fit objects for charity and commiseration who may from time to time be imprisoned in the Great Jail of Calcutta for debt. According to the preamble to the Murray Trust Act, 1897 (II of 1897), recent legislation, especially the Debtors Act, 1888, has so altered the position of deserving and unfortunate debtors that there has been for some years a practical failure of the object of the Murray Trust. Accordingly the scope of the trust is so enlarged as to include deserving poor persons in Calcutta who are not undergoing imprisonment for debt.

Gambling.—The Bengal Rain-Gambling Act, 1897 (III of 1897), extends the provisions of certain Bengal Acts to rain-gambling—that is to say, wagering on the occurrence or non-occurrence of rain.

Land Tenure.—The Chota Nagpur Commutation Act, 1897 (IV of 1897), provides for the commutation and record of predial conditions or services—*i.e.*, conditions or services appurtenant to the occupation of land other than the rent, in certain districts in the Chota Nagpur division.

Partition.—The Estates Partition Act, 1897 (V of 1897), lays down a code of rules for the partition of estates, and under the powers given by the Act of 1892 amends certain provisions of the General Code of Civil Procedure.

5. NORTH-WEST PROVINCES AND OUDH.

Act passed—1.

Famine.—The North-West Provinces and Oudh Famine Loans Recovery Act, 1897, provides for the summary realisation of sums due on account of loans granted by the local Government to land-holders and cultivators during the recent famine operations.

6. PUNJAB AND BURMA.

No Acts were passed in 1897 by the new Legislatures for the Punjab and Burma.

7. REGULATIONS UNDER 33 VICT., C. 3.

(For the Less Advanced Districts of British India.)

Regulations made—2.

Rubies.—Regulation No. 1 makes a small amendment in the Upper Burma Ruby Regulation of 1887.

The Upper Burma Regulation, 1897 (No. 2), provides for the registration of documents in Upper Burma, and supersedes the Regulation of 1887.

III. EASTERN COLONIES.

1. CEYLON.

[*Contributed by* A. Gray, Esq.]

Ordinances passed—16.

Most of the Ordinances consist of amendments, in points of detail, of previous legislation. Two or three are of more importance.

Waste Lands.—No. 1 deals with waste lands of which the ownership is doubtful, and enables the Crown to establish a good title. The Government agent publishes a notice to the effect that if no title is shown to the property within three months, it will be declared to be Crown property. If no claim is made, a declaratory order is published, which is final, except when the Government agent is within the three months informed that some person, then out of the island, is believed to have a good claim; in such case the period for the order is extended to six months.

If a claim is advanced, the Government agent holds an enquiry, and if satisfied, makes an order admitting the title of the claimant so far as

proved. When the land is more than ten acres in extent the Governor's consent is required for an order.

If the Government agent does not admit the claim, it is referred to the District Court or to a Special Commissioner, with an appeal to the Supreme Court.

Banking Companies.—No. 2 is an Ordinance to empower banking companies to be incorporated under the Joint Stock Companies Ordinances of 1861–93. A banking association of more than six persons must be registered under this law. The Schedule gives model forms of a memorandum and articles of association for banking companies, and provisions are added as to the publication and audit of accounts.

Plague.—The next Ordinance (No. 3) is a well-designed measure for preventing the introduction and spread of the plague. It gives the Governor large powers of making and enforcing quarantine regulations. The Ordinance was passed on February 9th, but strange to say the regulations were not issued by the Executive Council until September 20th.

Opium and Bhang.—By the Opium and Bhang Ordinance, 1897 (No. 9), the import duty on opium is raised to two rupees per pound, and the sale of it to any young person apparently under fifteen years of age is made a penal offence; while the importation of bhang and ganja is altogether prohibited. For the benefit of the uninitiated it may be noted that "bhang" is defined as "the dry leaves of hemp plants, whether male or female"; and "ganja" as "the dried flowering tops of cultivated female hemp plants which have become coated with resin in consequence of having been unable to seed freely."

Habitual Criminals.—A further attempt to deal effectively with crime is found in Ordinance No. 11, which makes all twice-convicted offenders thereafter to be "habitual criminals" for the purposes of the principal Ordinance of 1894. Where it appears to a police magistrate that a person charged before him has already been twice convicted, the case must not be tried summarily, but must, after the preliminary examination, be referred to the law officers for instructions.

Foreign Meat.—The importation of frozen meats is encouraged by exempting them from Customs duties (Ordinance No. 16). The same law allows a rebate on kerosene oil used as the source of motive power in engines.

2. STRAITS SETTLEMENTS.

[*Contributed by* Israel Davis, Esq.]

Ordinances passed—17.

No. 1 amends the United Kingdom and Colonial Probates Ordinance, 1893, by omitting a few words relating to the Sheriff Court of the county of Edinburgh.

Guides.—No. 2 and No. 6 relate to the military government of the Malay States Guides when serving in the Straits Settlements. The Guides are forces of the Federated Malay States, Perak, etc. It has been agreed that in the event of war a portion of these troops are to be placed at the Queen's disposal for service with Her Majesty's forces in the Straits Settlements. The Ordinances provide that the Guides, when serving with Her Majesty's regular forces, shall be subject to the Imperial Army Act, 1881, and any amendment thereof, in like manner as though they were a force raised in the colony. This provision is common to both Ordinances, but the later one repeals the earlier Ordinance in order to add to it the words "whether they are on active service or are undergoing drill exercise, training, or inspection, together with, or are voluntarily doing any duty together with Her Majesty's said forces."

Registration of Births and Deaths.—No. 3 and No. 9 amend the law of registering births and deaths. The Ordinance of 1868 is repealed with saving clauses for things done. This new code begins with a definition clause under which words referring to burial include burning. Every Deputy Registrar is required to inform himself carefully of every birth and death in his district, and to forward particulars to the Registrar of the particular settlement. In cases of death the Deputy shall, if practicable, personally inspect the corpse and make enquiries among the persons present at the death. The Registrars shall, within seven days after the registration with them of a birth, give notice to the parent or custodian requiring the child to be duly vaccinated, according to the Vaccination Ordinance, 1868. It is made the duty of the father and mother of any child and of the occupier of the house in which to his knowledge a child is born and of each person present at the birth and of the person having charge of the child within fourteen days of the birth, to furnish particulars to the Registrar or Deputy. If the name of the child "is not settled and cannot be registered within fourteen days of birth," it must be certified not later than seven years thereafter. When a person dies in a house the occupier with knowledge, the nearest relatives present at the death or in attendance during the last illness, each person present at the death, and in default the person causing the body to be buried, must furnish information. When death does not occur in a house, or a body is found elsewhere, every relative having knowledge, every person present at the death, and any person taking charge of the body or causing the body to be buried, must furnish information. A woman unable through illness or other cause to sign a certificate may authorise any male relative to sign on her behalf. Police officers and Penghulus are to give notice of births and deaths to the Registrar or Deputy. Medical officers and coroners are to give certificates of death.

No. 4 revises the penalties provided by the Burials Ordinance Act, 1896.

Lepers.—No. 5 amends the law of lepers. The Governor in Council

may from time to time prohibit the carrying on by lepers of specified trades and callings. Lepers are made punishable on entering public carriages, lodging in hotels, etc., or bathing in public baths. Leper asylums may be established by the Governor. The Governor in Council may make rules as to the inspection of private houses in which leprosy exists. No medical practitioner acting in pursuance of the Ordinance is to be sued. The Ordinance is not to come into force until the Governor notifies that it is the Queen's pleasure not to disallow the same.

Protection of Immigrant Indians.—No. 7 (Indian Immigration Ordinance, 1897) amends the law for the protection of Indians employed in the colony as labourers. Ordinances of 1884 and 1892 are repealed. The Protector of Immigrants is to have the powers of a magistrate, and his assistants are to be public servants within the Penal Code. No "immigrant" (but this word excludes first-class passengers, second-class passengers on certain ships, servants, and crews) may land except at Penang, Malacca, and Singapore. Vessels bringing immigrants are to be boarded by the Protector, and immigrants unfit for labour may be sent to hospital or returned to India at the expense of the employer for whom they were recruited. The law is to be explained to the immigrants, and their language appears from the provision that this explanation may be made by a printed paper in Tamil. Except on their way to British India, Ceylon, and places to which Indian immigration is authorised, etc., immigrants may not leave a settlement without a written permit from the Protector. Immigrants of sixteen years of age or upwards may contract and be sued under the Ordinance as if of full age.

Contracts must be personally explained by the Protector. The Protector may approve a schedule of tasks for any estate. Work is limited to six days a week, six consecutive hours, and nine hours a day with certain provisions for overwork. Provisions are made as to sufficient food and sanitary lodgment. Families are not to be separated.

Paper Currency.—No. 8 (Currency Note Ordinance, 1897) provides for the issue of Government Paper Currency. The Colonial Secretary and Treasurer and one other person named by the Governor are to be the Commissioners. Currency notes may be for one dollar, five dollars, and higher amounts. Currency notes will be legal tender except by the Commissioners (who are bound to redeem them in current silver coin) and by certain banks, and except that dollar notes are legal tender only up to ten dollars. The silver coin received in exchange for notes shall form a Note Guarantee Fund. A fixed proportion must be kept in cash, and the balance may be invested. The fixed proportion shall be in the first instance two thirds, but the Governor, with the sanction of a Secretary of State, may fix another proportion not less than one half. Accounts of the Commissioners shall be annually audited by such person as a Secretary of State directs, and certain abstracts are to be published.

No. 10 relates to Cavenagh bridge, and is of purely local interest.

Export of Arms.—No. 11 amends the law with respect to the export of arms and ammunition. Permits are to be obtained from the Chief Police Officer. The right to search conferred by the Ordinance of 1887 is extended.

Supply Ordinances.—Nos. 12 and 13 are supply Ordinances. A supplementary provision of about $149,000 is made for 1896. The expenditure for 1898 is estimated at $4,710,890, and provision is made accordingly.

Acquisition of Land.—No. 14 facilitates the acquisition of land by the colony for the Government of the Federated Malay States by adopting earlier legislation in the nature of a Lands Clauses Act.

Office of Resident General.—No. 15 gives to the office of the Resident-General of the Federated Malay States perpetual succession and a corporate seal. The preamble recites that the incorporation is expedient for conveyancing purposes.

"Pilgrim Ships."—No. 16 (Pilgrim Ships Ordinance Act, 1897) replaces legislation of 1890. "Pilgrim" means a Mohammedan passenger going to or returning from the Hedjaz. Such a passenger, who is returning without having actually landed, is also a pilgrim. Ships carrying passengers for whom no separate accommodation in any cabin, state-room, or saloon is reserved, and having on board at least one pilgrim for each hundred ton gross tonnage, are pilgrim ships. Regulations are made as to sanitation, food, cubical space, hospitals, medical officers, etc. Certain powers are delegated to the authorities at Aden. Pilgrim ships must be steamers, must have apparatus to distil water, etc., and may be subjected to other regulations by the Governor in Council.

Pilotage.—No. 18 amends the local law of pilotage.

Native Passenger Lodging Houses.—No. 19 makes slight alterations in the Native Passenger Lodging Houses Ordinance, 1896.

3. LABUAN.

[*Contributed by* Sir Courtenay Ilbert.]

Ordinances passed—3.

Excise.—The Spirit Duties Ordinance, 1897 (No. 1), abolishes the duties fixed by an Ordinance of 1868, and authorises the levy of such duties as may from time to time be directed by the Governor and notified in the Government *Gazette*.

The Tobacco Ordinance, 1897 (No. 2), declares that the cultivation of tobacco in the colony is free, but that its manufacture is subject to license, and that all tobacco is to be chargeable with such import duty as may from time to time be notified in the official *Gazette*. The Ordinance authorises the Governor to grant licenses for the sale and manufacture of tobacco, and enables the duties to be farmed. This Ordinance is amended by Ordinance No. 3.

4. HONGKONG.

[*Contributed by* Sir Courtenay Ilbert.]

Ordinances passed—27.

Partnership.—The Partnership Ordinance, 1897 (No. 2), follows, with local modifications, the English Partnership Act, 1890 (53 & 54 Vict., c. 39).

Probate.—The Probates Ordinance, 1897 (No. 3), consolidates with amendments the law relating to probates of wills, to the jurisdiction of the Probate Court, and to the duties of the official administrator.

Flogging.—The Flogging Ordinance, 1897 (No. 5), defines the mode in which the punishment of flogging is to be inflicted in the colony.

Stowaways.—The Stowaways Ordinance, 1897 (No. 7), imposes penalties on stowaways arriving in Hongkong.

Women and Girls.—The Protection of Women and Girls Ordinance, 1897 (No. 9), consolidates the enactments which impose punishments for trafficking in women and girls, and deals with offences against women and girls. The Registrar-General has special powers under the Act. If he has reason to believe that any woman or girl has been brought into the colony, or is being detained or trained in the colony for immoral purposes, he may inquire into the case, and require the person under whose control she is to supply a photograph of her and to give security that she shall not leave the colony without the Registrar-General's consent, that she shall not be trained or disposed of for immoral purposes, and that she shall be produced before the Registrar-General whenever he so requires. In default, the Registrar-General may provide for her removal to a place of safety. If he is satisfied that a girl under sixteen is being used or trained for immoral purposes, he may by warrant order her removal to a place of refuge, where she is to be detained until further order or until she attains the age of nineteen years, or marries, or is adopted. The Registrar is also armed with powers of search and of summoning persons capable of giving information.

Opium.—The Prepared Opium (Divans) Ordinance, 1897 (No. 15), provides for the licensing and inspection of opium divans.

Milk.—The Infected Milk Ordinance, 1897 (No. 17), makes provisions resembling those of the English law for the inspection of dairies when infectious disease is prevalent, and for prohibiting the supply of milk from infected or suspected dairies.

Interpretation.—The Interpretation Ordinance, 1897 (No. 24), is framed on the same lines as, but is not a mere copy of, the English Interpretation Act, 1889.

Vagrants.—The Vagrancy Ordinance, 1897 (No. 25), gives powers of dealing with vagrants not being Chinese.

Landlord and Tenant.—The Small Tenements' Recovery Ordinance

1897 (No. 27), gives summary powers for the recovery of small tenements under provisions resembling those contained in the English Small Tenements Recovery Act, 1838 (1 & 2 Vict., c. 74).

IV. AUSTRALASIA.

1. VICTORIA.

[*Contributed by* H. E. Gurner, Esq.]

Acts passed—36. Between June 30th, 1897, and September 27th, 1897, Nos. 1483 to 1518 inclusive.

Of the Acts passed in the fourth Session of the sixteenth Parliament of the Colony of Victoria there are but few which are of more than local importance.

Servants' Registry Offices.—Act No. 1489 provides for the regulation of Servants' Registry Offices, and under s. 3 it makes it incumbent on every person keeping a registry office to be licensed. A certificate of good character of the applicant has to be produced to the Chief Inspector of Factories, and a fee of 10*s.* has to be paid, such fee to be paid annually.

Under s. 5, in the event of the Chief Inspector refusing the license, an appeal is given to the Court of Petty Sessions. S. 8 directs certain books to be kept, in which particulars of the fees taken and nature of engagement are to be entered. It further directs all letters received at the Registry Office to be retained for a period of one year.

Under s. 16 the license-holder must post up in his office the fees charged, and such fee only as is so posted up is he allowed to charge.

Under s. 19 the Governor in Council may make regulations and prescribe the amount of the fees to be charged.

By s. 20 penalties to the extent of £10 are provided for breach of the provisions of the Act. In the event of a license-holder being convicted of any offence under any Act or at Common Law and sentenced to a month's imprisonment without the option of a fine, his license is declared to be *ipso facto* forfeited.

Artificial Manure.—Act 1490 deals with the sale of artificial manure, and compels the vendor to give an invoice certificate to the purchaser stating the proportion of nitrogen, phosphoric acid, and potash in the manure. If the purchaser has any reason to doubt the accuracy of these proportions he can submit a sample to the Public Analyst, and in the event of there being any difference in these proportions outside certain defined limits of deviation allowed by the Act, penalties are provided against the vendor in addition to leaving the rights of the parties by civil process untouched.

Goods, Indorsed Warrants.—By Act 1512, an Act to further amend the Instruments Act of 1890, when a warrant for goods is indorsed by the person to whom it has been issued or given or his agent, and is delivered to any person, such person and any subsequent holder of the warrant in good faith shall as against the person to whom it was issued or given be entitled to the goods as if the contract had been made with such indorsee.

Insolvency.—Act No. 1513, entitled an Act to amend the law relating to insolvency, is an Act of one hundred and twenty-six sections amending the principal Act of 1890. It mainly deals with the procedure relating to insolvent estates, and consequently is of only local interest.

By s. 100 post nuptial settlements are made absolutely void if made within twelve months of settler's insolvency unless registered within seven days of settlement in Victoria or within twenty-eight days, and ordinary course of post if settler be absent from Victoria.

Mining.—Act 1514 is an act relating to mining. It amends the Act of 1890. It extends that Act, which only related to gold, to all minerals. It also provides for mining leases and mining on private lands, and the assessment of purchase money and compensation to be paid. The Act also provides that neither boys under fourteen nor females of any age are to be employed below ground; also that no persons are to be employed below ground for more than forty-eight hours per week. Stringent regulations are made as to the fencing of machinery and the lowering apparatus, cleansing of boilers, etc., etc. Engine-drivers are bound to have certificates of competency from a Board appointed under the Act.

2. QUEENSLAND.[1]

Acts passed, 30—General, 19; Local and Personal, 11.[2]

Queensland did not pass in 1897 any act adhering to the scheme of Australasian federation,[3] and its legislation in 1897 is of less volume and interest than usual.

Aboriginals.—61 Vict., No. 17, deals with the protection of aboriginals in black natives and half-castes who are living with the blacks. It provides for the creation of native reserves and the removal thither of all aboriginals except

(*a*) Those who are not lawfully employed under the Colonial laws.

(*b*) Those who do not hold permits to be absent from a reserve.

[1] The Session of 1897 ended on December 15th, 1897.

[2] The statutes of the year are numbered consecutively, except the purely private acts, but in the official edition are classified as above stated. The annual volume of the Colonial statutes is prepared on the plan of Chitty's statutes, but contains tables and an index like that of the British official edition, showing the effect of the year's legislation in the statute book.

[3] See *Journal*, vol. ii., p. 173.

(*c*) Being females, are females who are lawfully married to and resident with a husband, who are not aboriginals (s. 10).

(*d*) Who are otherwise provided for in a manner satisfactory to the Home Secretary.

Provision is made to exclude unauthorised persons from the reserve and as to the conditions of permits and employment, and each reserve has a protector.

The sale of liquor or opium to aboriginals is prohibited, as is the purchase of (ss. 19-25) Government blankets issued to them (s. 18).

Customs and Excise.—61 Vict., No. 4, imposes an additional Customs duty on ale, beer, porter, cider, and perry, as from August 4th, 1897.

61 Vict., No. 4, imposes an Excise duty on beer made in the colony, and provides for the registration and licensing of breweries.

District Courts.—61 Vict., No. 23, increases the number of district court judges from three to four.

Education.—61 Vict., No. 16, empowers the Governor in Council to make regulations for adding to the subjects required to be taught in primary schools under s. 22 of the State Education Act, 1875 (39 Vict., No. 11), or for omitting some of the compulsory subjects in small schools.

Savings Banks.—61 Vict., No. 8, increases from £100,000 to £2,000,000 the amount of Government Savings Bank stock issuable under the Government Savings Bank Act, 1894 (58 Vict., No. 31).

Elections.—The Elections Act, 1897 (61 Vict., No. 26), amends the prior Election Acts.

By s. 26 it is directed that "in all copies of the principal Act hereafter printed by the Government printer all repeals and amendments of the provisions of the principal Act made by the Elections Act of 1885, Amendment Act of 1886, or the Elections Act of 1892, or this Act shall be omitted or inserted as the case may be, in accordance with the directions set out in the schedule to this Act; and all sections of the last-mentioned Acts so directed to be inserted shall bear the numbers assigned to them respectively by the said schedule, and reference shall be made in the margin of the principal Act to the sections of the Acts by which such repeals or amendments are respectively made."

This clause is a development of directions embodied in certain imperial acts (*e.g.*, the Army Act and the Friendly Societies Act), but goes further by permitting a departmental consolidation and the indication of the history of the amendment of the law.

A reprint of the Act in accordance with the directions is contained in the annual volume for 1897. But footnotes are substituted for the prescribed marginal references.

The reprint forms a code as to the law of registration, election, and corrupt and illegal practices.

The only changes in the Electoral Law by the 1897 Act which deserve

notice are a new definition of naturalised subject (s. 3); a shortening of the period of residence required on removal of a registered elector from one division to another (s. 4); the procedure for dealing with change of qualification (ss. 7, 8, 9), the holding of Registration Courts every two months (termed "bi-monthly") instead of every three months (s. 6), and the proceedings at nominations of candidates (ss. 14, 15, 16).

Lands.—Three Acts deal with lands.

1. The Land Act, 1897 (61 Vict., No. 25), an Act of 262 sections, consolidates with amendments the laws relating to the occupation, leasing, and alteration of Crown lands, and repeals eight Acts.

2. 61 Vict., No. 14, deals with pastoral leases by relaxing the conditions of such leases as to fencing against rabbits, and altering the law as to contribution by adjoining owners to the cost of such fences.

3. 61 Vict., No. 13, deals with the purchase of agricultural land proclaimed open for selection, and the mode of paying instalments of the purchase money.

Married Women.—61 Vict., No. 2, adapts to the Colony the Imperial Married Women's Property Act, 1893 (56 & 57 Vict., c. 63).

Matrimonial Causes Act.—61 Vict., No. 6, authorises

(*a*) The trial of a matrimonial cause *in camerâ*.

(*b*) Prohibition by the Court of publication of any report or account of the evidence in a matrimonial cause.

Marsupials.—61 Vict., No. 18, a temporary Act, expiring on January 1st, 1900, takes the place of the expired Marsupials Act, 1895 (59 Vict., No. 17),[1] from which it differs only in detail and not in general scope.

Trustees and Executors.—The Trustees and Executors Act, 1897 (61 Vict., No. 10), is an adaptation to the Colony of the Trustees Acts, 1893, 1894, and 1896, and s. 8 of the Trustees Act, 1888 (56 & 57 Vict., c. 53; 57 & 58 Vict., c. 10; 59 & 60 Vict., c. 35).

It also includes ss. 30 and 43 of the Conveyancing Act, 1881 (as to the devolution of trust and mortgage estates on death and the maintenance of infants).

It also includes ss. 27, 28, and 30 of the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), as to the liability of executors, etc., with reference to rent covenants and agreements, and distribution of assets and provisions based on those of the Conveyancing Act, 1881 (s. 43), as to the maintenance of infants.

Colonial enactments are also included which provide for payment to trustees by Order of Court of a commission not exceeding 5 per cent. for managing the trust estate (s. 56), and the control by the Court of trustees' accounts (s. 57).

[1] See *Journal of Comparative Legislation*, vol. i., p. 51.

3. SOUTH AUSTRALIA.

[*Contributed by* A. Buchanan, Esq.]

Acts passed in 1897—Public, 19; Private, 2.

Cemeteries.—The Cemeteries Act Amendment Act (No. 676) requires the deposit of plans with the Local Board of Health and publication of notice before any cemetery is established or extended.

Chemists.—The Pharmacy Act Amendment Act, 1897 (No. 677), requires pharmaceutical chemists to take out annual certificates, and that at least one certificated chemist be exclusively employed in each shop or branch business.

Vermin.—The Vermin-Proof Fencing Amendment Act, 1897 (No. 679), provides for the repayment of loans for wire-netting with interest at 4 per cent. per annum by twenty annual instalments of £7 7*s.* 2*d.* per cent. (s. 2), increases the maximum of the vermin rate to £1 per square mile, and exempts from rating holders of less than one-fourth of one square mile of land.

Indecent Advertisements.—The Indecent Advertisements Act, 1897 (No. 680), prohibits the publication of matter of an indecent, immoral or obscene nature, or which relates to venereal or contagious diseases affecting the generative organs or functions, or to any complaint arising from or relating to sexual intercourse, or which relates to female irregularities, *bonâ fide* medical works or matter *bonâ fide* published for the advancement of medical science being exempt.

State Bank.—Act No. 682 of 1897 provides that whereby any Act of Parliament security has to be deposited, such security may be made in mortgage bonds issued by the State Bank, and changes the end of the State Bank's financial year to March 31st.

Income Tax.—The Income Tax Further Continuance Act, 1897 (No. 683), makes Act 624 of 1895 apply to the financial year ending June 30th, 1898, subject to the increased exemption of £150 mentioned in Act 663 of 1896.

Gaming.—The Gaming Further Suppression Act, 1897 (No. 685), prohibits betting with (s. 2) or by persons under twenty-one years of age (s. 3) or receiving money or valuables from infants for gaming (s. 4), the promotion of sweepstakes for reward (s. 5), or the acting as an agent for reward to place money on the totalizator (s. 6); provides for and limits the issue of licenses to racing clubs to use the totalizator (ss. 7-9); gives large powers of forcible entry and search to the police upon reasonable suspicion of an offence under the Act (s. 10). A reasonable suspicion on the part of the Court is to be deemed *prima-facie* evidence of the commission of the offence (s. 11). Police acting under instructions are

not to be deemed accomplices (s. 14), and the "purse trick" and the "three-card trick" are declared unlawful.

Seed-Wheat.—The Seed-Wheat Amendment Act, 1897 (No. 686), authorises the supply of seed-wheat to distressed farmers, and extends, where necessary, the time for payment for seed-wheat advanced under the Seed-Wheat Act, 1896.

Closer Settlement.—The Closer Settlement Act, 1897 (No. 688), empowers the Commissioner of Crown Lands to repurchase lands for the purpose of dividing the same into blocks not exceeding £1000 in value to be let upon perpetual lease under the Crown Lands Acts. Repurchases are to be limited to the amounts voted by Parliament for the purpose. Lessees must during the first five years of term expend in substantial improvements not less than £6 for every £100 of the value of the block leased. No lease is to be granted or transfer of lease approved to any lessee or holder of land who is already or would thereby become the holder of land exceeding £1000 of unimproved value.

Shipping.—The Marine Board and Navigation Act Amendment Act, 1897 (No. 691), provides for the appointment of harbour masters and the making of bylaws to regulate the use of harbours (ss. 2-5); amends Act 619 of 1894 by fixing the position of the load-line according to the tables used from time to time by the Board of Trade of the United Kingdom (s. 8), and makes provision for the inspection of explosives and the forfeiture or destruction of damaged or dangerous explosives, and authorises the making of bylaws to regulate the landing, carriage, and manufacture of explosives (ss. 10-15).

Electric Lighting.—A private Act, "The South Australian Electric Light and Motive Power Company's Act, 1897," authorises the company to supply electric light and power within any municipal corporation with which it may enter into a contract therefor.

4. WESTERN AUSTRALIA.

[*Contributed by* His Honour Mr. Justice James.]

Acts passed—Public, 36; Private, 1.

The parliamentary Session of 1897 added but little of importance to the statute book, the following measures only presenting features of interest from the point of view of the society:—

Aborigines.—No. 5. The Aborigines Act, 1897, abolishes the Protection Board, to which under the Constitution Act of 1889 an annual sum of £5000 had been appropriated from out of the Consolidated Revenue Fund, and creates in its stead a sub-department of state under the control of a responsible minister to promote the welfare of the native population, including half-caste, and their education.

Prohibited Immigrants.—No. 13. Immigration on the part of

(*a*) Persons unable to satisfy a certain indicated test of proficiency in the English language, and to write their names in their own language;

(*b*) Paupers or probable paupers;

(*c*) Idiots or insane persons;

(*d*) Those suffering from contagious disease;

(*e*) Unpardoned offenders who have been within three years last past convicted of felonies or misdemeanours involving moral turpitude, not being offences merely political;

(*f*) Prostitutes or persons living on the prostitution of others;—

is prohibited by the Immigration Restriction Act, 1897, which also inflicts penalties upon those who introduce prohibited immigrants.

Registration of Firms.—No. 14. The Registration of Firms Act, 1897, in order to assist customers in ascertaining with what persons they are dealing, enforces the registration of the names of the partners for the time being in any business firm conducted under a firm name other than that of the full or usual names of all the partners without any addition.

Workmen's Lien.—No. 20. The object of the Workmen's Lien Act, 1897, is to assure to the employed a more complete security for their wages, though it does not interfere with the exercise of other remedies open to them outside the Act. It applies to works performed on contract; and, after judgment given or order made, enables workmen to obtain from the contractee payment of wages due to them by the contractor to the extent of the moneys lying in the hands of the contractee unpaid to the contractor, and this operates as an assignment of such moneys to the workmen. In the absence of any judgment or order, and where the contract exceeds £100, the contractee, before paying over any moneys to the contractor, must take care to obtain from him a statement verified by declaration of particulars of wages due, and must see that they are paid over, otherwise the contractee is liable to the workmen to the extent of the amount paid by him to the contractor.

Burial Grounds.—No. 23. The Cemeteries Act, 1897, provides for the setting apart of lands for burial places and their control, the property being vested in trustees. It also empowers under certain conditions the discontinuance of cemeteries to which lands have heretofore been dedicated.

Employment Brokers.—No. 24. The Employment Brokers Act, 1897, compels registration on the part of all who follow for reward the calling of agent for procuring engagements for persons seeking to be employed for reward, and no person can practise without license first granted by the licensing magistrates of the district. Persons by law empowered to engage seamen are excepted from the provisions of this Act.

Adulteration of Liquor.—No. 25. The Sale of Liquors Amendment Act, 1897, provides for analysis by a public officer in order to detect and punish adulteration.

Industrial Statistics.—No. 26. The Industrial Statistics Act, 1897,

establishes statistical agents in each magisterial district to compile returns and submit them to the Registrar-General, who, after collating them, transmits to the Treasurer for laying before Parliament. Returns are in the first instance made by

(*a*) Owners and occupiers of land.
(*b*) Owners and custodians of live stock.
(*c*) Managers of industrial establishments.

Penalties are inflicted upon persons neglecting to comply with the requirements of the Act.

Imported Coloured Labour.—No. 27. The Imported Labour Registry Act, 1897, applies to certain coloured nationalities, imposing restrictions on their numbers and on the area into which they may be imported—viz., North of Latitude 27° S. Labourers may be introduced only after contract made by persons other than apparent natives of India, China, Africa, or of the islands of the Indian or Pacific Oceans, or of the Malay Archipelago. Contracts under this Act are subjected to the provisions of the Masters and Servants Act, 1892.

Circuit Courts.—No. 28. The Circuit Courts Act, 1897, enables the holding of criminal sittings of the Supreme Court in districts to be proclaimed by the Governor.

Metropolitan Tramways.—No. 30. The City of Perth Tramways Act, 1897, confirms a provisional order of the Commissioners of Railways empowering the making and maintenance of certain 3 ft. 6 in. gauge tramways whereof the cars are to be driven by electric power.

Mining on Alienated Lands.—No. 33. The Mining on Private Property Act, 1897, provides for mining leases on private lands either to the owner thereof or to any other applicant. There are three modes of acquiring such rights upon lands not being within municipalities or other excluded areas—viz :

(1) On resumption of private land by the Governor on behalf of the Crown.
(2) On proclamation of private land as an alluvial gold-field.
(3) In the case of compulsory mining leases.

Foreign Companies.—No. 35. The Companies Act Amendment Act, 1897, provides for a local register of foreign companies.

5. TASMANIA.[1]

[*Contributed by* J. H. Greenhalgh, Esq.]

Session 61 Vict.
General Acts passed—22.

Customs.—Act No. 6 contains 323 sections, and consolidates and amends the law relating to Customs. Restrictions are imposed upon (*inter alia*) the importation of certain goods, including books, pictures, and lithographs, or any similar article or publication wherein the copyright is first subsisting, first composed, or written or printed in the United Kingdom or in Tasmania, and printed or reprinted in any other part of the world, as to which the proprietor of such copyright or his agent has given to the Minister administering the Act a notice in writing that such copyright subsists and a statement as to when it will expire. Tea which in the opinion of the analytical chemist is unfit for food, and likewise exhausted tea, are subject to forfeiture. The other provisions are chiefly of a fiscal character.

Council of Agriculture.—Act No. 7 provides for the establishment of a department of agriculture by the election of a Council of Agriculture whose powers and duties are prescribed. The responsible Minister of the Crown for the time being administering the Act is styled the "Minister for Agriculture," who is to administer certain scheduled Acts, and to bring certain matters before the Council for their consideration and advice.

Defence Act Discharges.—Act No. 8 repeals ss. 5 and 30 of the Defence Act, 1889, and enacts that any member neglecting to apply for his discharge at the termination of his three-year's active service shall be deemed to have re-enrolled for the further period of one year, and so on from year to year; it also provides for the appointment of an officer, to be styled the "Commandant Defence Force of Tasmania," and charged with the military command and discipline of the Defence Force.

Salaries of Officers of Parliament.—Act No. 9 regulates the salaries of officers of Parliament, and empowers the Speaker of the House of Assembly, in case of any dissolution of that House, to hold office until the next meeting of Parliament. There is a like provision in the case of the President or the Chairman of Committees of the Legislative Council, if re-elected a member of the Council.

Act No. 14 provides for the reduction during 1898 of certain official salaries and annual payments fixed by law. The salaries of the Attorney-General, Chief Secretary, Treasurer, and Minister of Lands and Works are thereby reduced from £900 to £750 respectively.

[1] The Session 61 Vict. began on July 13th, 1897, and ended on December 24th, 1897. The Acts passed and sanctioned down to that date are here noticed. Some of them classified as general would in the United Kingdom have been treated as local. All the Acts of last Session have now received assent.

6. NEW SOUTH WALES.

[*Contributed by* A. R. Butterworth, Esq.]

Acts passed—Public, 48; Private, 7.

Prefatory Observations.—The Statute Book for 1897, besides the alteration in its form,[1] is noteworthy for the number of consolidating Acts contained in it, amounting to one fourth in number of the public Acts passed—12 out of 48. The most important and most considerable Act passed is the long-expected Municipalities Act, which replaces the Act of 1867 and its fifteen amending Acts.

Interpretation.—The Interpretation Act of 1897 (No. 4) was passed for consolidating enactments relating to the interpretation of Acts of Parliament, and for further shortening their language. The two Acts, 16 Vict., No. 1, and 22 Vict., No. 12 (commonly known as the Acts Shortening Act of 1852 and 1858 respectively), and the Temporary Acts Continuance Act of 1861 (24 Vict., No. 17), are mentioned in the schedule; and the new Act provides that notwithstanding anything in that Act the said Acts of 1852, 1858, and 1861 shall continue in force until specifically repealed, but those Acts (except as to certain specified provisions, which are to apply to future Acts) shall apply only to Acts theretofore passed, while "this Act shall apply only to this Act (*sic*) and all Acts hereafter passed" (s. 2). The Act re-enacts the main provisions of the repealed Acts, and adopts others from the Imperial Interpretation Act, 1889. Distance, unless the contrary intention appears, is still to be computed according to the nearest route ordinarily used in travelling [s. 35 (I)].[2] S. 36, dealing with the citation of Acts, is limited to the mode of citing Acts of that Session and future Acts, which may be cited by their short title or by reference to the "secular year."[3]

[1] A change has for the first time since the Parliament of New South Wales began to legislate—viz., since September 1824—been made in the form in which the Government printer issues the statutes, which have hitherto been in a folio volume, but are now issued in quarto. We believe Tasmania is now the only one of the Australasian colonies which retains the cumbrous folio, and Queensland the only one which adopts the handy octavo form, with a first-rate index brought annually up to date. The public Acts of New South Wales are now numbered consecutively, followed by the date of the year Anno Domini, and not, as hitherto, according to the year of the Queen's reign—*e.g.*, Act No. 1, 1897, instead of 60 Vict., No. 1,—corresponding to the form of citation used in India. The private Acts remain, as heretofore, unnumbered, but the year Anno Domini is still given.

[2] The doubts and inconveniences arising from this mode of computation have been frequently pointed out: see *e.g.*, the judgments in Lake *v.* Butler (1855), 5 E. & B. 92. By the Imperial Act of 1889 distance is to be measured in a straight line on a horizontal plane (s. 34).

[3] The expression "secular year" appears to be used as equivalent to the year dating from the Christian era.

Public Roads.—The Public Roads Act of 1897 (No. 5) amends and consolidates the law relating to the opening, closing, and survey of public roads, and makes provision for the disposal of unnecessary roads, for preventing the obstruction and injury of roads, for altering the alignment of streets in municipalities, and for other matters of a like nature. Large powers to "resume" private land for the purpose of making a road are vested in the Governor on the initiative of the Minister for Lands, whenever the latter deems it expedient that a road should be opened (ss. 4, 5). In estimating what compensation shall be made to the owner, whether in land or money (s. 6), effect is to be given to what is known as the "betterment" principle, whereby any increase in the value of the property by reason of additional facilities of access is to be deducted from the estimated value of the land resumed (s. 9).

Pharmacy.—By the Pharmacy Act, 1897 (No. 7), the Board of Pharmacy, as constituted by the Poisons Act of 1876, is dissolved, and a new Pharmacy Board is to be constituted and incorporated (s. 1). The Act provides for the examination and registration of pharmacists, and makes regulations with respect to the carrying on of a pharmacist's business. Every year two members of the Board (which is not to exceed eight in number) are to retire, and two new members are to be elected by the registered pharmacists (ss. 1, 2).

Public Trusts.—The Public Trusts Act, 1897 (No. 8), and the Real Property (Crown Lands) Act, 1897 (No. 47), add two more to the already long list of statutes dealing with Crown Lands. The former declares and enlarges the powers of the Governor with respect to the appointment of trustees of Crown Lands reserved, whether temporarily or permanently, and validates past appointments of corporate bodies as trustees of lands reserved for any public purpose. The latter provides for the exchange with or surrender to Her Majesty or the Governor of lands held by trustees or executors, and validates past transactions of that kind.

Municipal Loans.—Three Acts were passed dealing with the important subject of municipalities. The principal of these (No. 23) will be mentioned in its order. Of the other two, the Municipal Loans Act (No. 10), and the Municipal Loans Further Validation Act (No. 18), the former confers the power of borrowing money upon certain municipalities, which have hitherto not possessed such power, while the latter enables the Governor to validate certain loans already made to certain municipalities, and the securities given for the same.

Service of Equitable Process.—The Service of Equitable Process Act of 1897 (No. 11) has for its object to amend and declare the law relating to the service of process in the Supreme Court in its equitable jurisdiction, and repeals the somewhat similar Act of 1849, 13 Vict., No. 31. S. 3 specifies in what cases the Supreme Court may allow any equitable process to be served out of the jurisdiction; and for the most part it contains

provisions similar to those contained in the English Rules, S.C., 1883, Order 11. It, however, makes one important addition to those provisions by providing that the judge may allow such service whenever "(*i*) relief is sought against a person out of the jurisdiction in respect of his membership or alleged membership in any company or society whose principal place of registration is within the jurisdiction."[1]

Church Lands.—Two Acts deal with Church lands. The first of these—the Church Acts Repealing Act of 1897 (No. 16)—after reciting that provision has been made for the management of parochial property of the Church of England within the province of New South Wales, and for the formation of a tribunal for the administration of ecclesiastical discipline in every diocese, repeals the Church Acts, 7 Will. 4, No. 3; 8 Will. 4, No. 5; and 21 Vict., No. 4, enacts that all lands held for Church purposes shall be held subject to the Ordinances of Synod, validates the appointment of trustees in the past, and vests Church property in new trustees duly appointed without requiring a conveyance. The second of these Acts—the Church and School Lands Act, 1897 (No. 20)—repeals Acts of 1880, 1884, and 1889, and in effect provides that Church and School lands shall vest in Her Majesty, and shall be dealt with as Crown lands under the Crown Lands Acts.

Licensing.—The Licensing Acts Amendment Act, 1897 (No. 17), amends the Licensing Acts of 1882 and 1883.

Registration of Deeds.—The Registration of Deeds Act, 1897 (No. 22), repeals the whole or parts of five prior Acts, re-enacting most of the provisions of the Registration of Deeds Act of 1843 (7 Vict., No. 16), and providing for the registration of all statutes of the colony, of grants by the Crown, and wills and instruments affecting land, and of charters of incorporation and memorials of companies (s. 6).

Municipalities.—The Municipalities Act, 1897 (No. 23), as already mentioned, is the most important statute of the Session, being in effect a Local Government Act for all populous places within the colony. It repeals the Act of 1867 (31 Vict., No. 12) and fifteen amending Acts, and in 265 sections and 20 schedules makes elaborate provisions regarding the constitution of municipalities, old and new, and everything appertaining to municipalities. It enables the Governor, on the petition of at least fifty persons who would become liable to be assessed for municipal taxes, to create a new "borough" or "municipal district," unless a counter-petition signed by a greater number of such persons is presented within a limited time (s. 11). The Act also

[1] The effect of service of process in such cases on persons not resident within the colony will doubtless have to be considered in the future in some case in which an attempt is made to give practical effect to these provisions; and the English courts may be called upon to decide whether it is competent for the Colonial Legislature to enable the courts of the colony to assume jurdisdiction over those who do not reside within, and are not personally subject to such jurisdiction. See and compare Bank of Australasia *v.* Harding (1850), 9 C.B. 661; and Sirdar Gardyal Singh *v.* Rajah of Faridkote (1894), A.C. 670; 11 R. 340; 10 Times R. 621; and the cases there cited.

deals with the qualification of mayors, aldermen, and auditors, with municipal elections, rates, loans, and municipal undertakings generally.

Nuisances.—The Nuisances' Prevention Act, 1897 (No. 24), repeals the Acts 39 Vict., No. 14, and 55 Vict., No. 20, and is a complement to the Municipalities Act, enacting that the council of each municipality shall exercise and execute certain powers and duties with respect to sanitary matters within their boundaries.

Quarantine.—The Quarantine Act, 1897 (No. 25), repeals the Acts 3 Will. 4, No. 1; 17 Vict., No. 29; and 58 Vict., No. 2; and consolidates quarantine regulations.

Public Entertainments.—The Public Entertainments Act, 1897 (No. 26), repeals the Acts 14 Vict., No. 23, and 36 Vict., No. 8, and consolidates the laws for regulating places of public entertainment, providing for the licensing of such places. It also enacts that "the Colonial Secretary may, whenever he is of opinion that it is fitting for the preservation of good manners, decorum, or of the public peace so to do, forbid by writing under his hand the acting or representing any public entertainment, or any part thereof, or any prologue or epilogue, or any part thereof, in such theatres or other places for which an authority or license or general license may have been granted under the authority of this Act" (s. 9).

Excise.—The Distillation Act, 1897 (No. 27), is an Act of 157 sections to consolidate the laws relating to the distillation, rectifying, and compounding of spirits, and the protection of the Revenue with respect to the duties on spirits. The penalty for distilling spirits without a license and for various other offences under the Act is fixed at not less than £100 nor more than £500. It repeals five earlier Acts.

Employers' Liability.—The Employers' Liability Act of 1897 (No. 28), repeals the Act of 1886 (No. 8) and the Act of 1893 (No. 6), which extended the provisions of the earlier Act to certain seamen, and re-enacts their provisions in a single Act.

Contractors' Debts.—The Contractors' Debts Act of 1897 (No. 29) repeals the Acts of 1879 (No. 22) and of 1888 (No. 3), and re-enacts their provisions.

Claims against the Government and Crown Suits.—The Claims against the Government and Crown Suits Act, 1897 (No. 30), is another consolidating Act, repealing the Acts of 1856 (No. 3) and of 1876 (No. 38), and re-enacting their provisions.

Compensation for Fatal Accidents.—The Compensation to Relatives Act of 1897 (No. 31) repeals and, in a slightly shortened form, re-enacts the provisions of the Act of 1847 (11 Vict., No. 32), and is virtually a re-enactment of Lord Campbell's Act. No notice is taken of the English amending Act of 1864 (27 & 28 Vict., c. 95), enabling those interested to sue when no action has been brought within six months by the executor, so that the law in the colony remains as it was in England prior to 1864.

Australasian Federation.—The Australasian Federation Enabling Act Amendment Act of 1897 (No. 34) alters s. 35 of the Principal Act of 1895 (No. 24)[1] by substituting eighty thousand for fifty thousand votes as the number of electors requisite for acceptance on the part of New South Wales of the Federal Constitution. Any number of votes in the affirmative less than eighty thousand is equivalent to the rejection of the Bill.

Patents and Trademarks.—The International Patents and Trademarks' Arrangements Act, 1897 (No. 35), recites the provisions of s. 103 of the Imperial Patents, Designs, and Trademarks Act, 1883 (46 & 47 Vict., c. 57), as amended by the Imperial Act of 1885 (48 & 49 Vict., c. 63) and of s. 104 of the former Act, and enacts that if Her Majesty applies the provisions of s. 103 to this colony, such inventions, designs, and trademarks as are protected in England or under international arrangements in foreign states, may receive similar protection in the colony (s. 2). The Act also provides for similar mutual protection of inventions, etc., protected in other British possessions (s. 3).[2]

Companies' Arrangement.—The Joint Stock Companies' Arrangement (Continuation) Act, 1897 (No. 37), amends s. 3 of the Principal Act of 1891 (55 Vict., No. 9) by extending the time for making applications and orders under that section until January 1st, 1899. The Joint Stock Companies' Arrangement Act, 1891—a false date, since the Act was passed in January 1892—not only by s. 2 adopted the provisions of the Imperial Act of 1870 (33 & 34 Vict., c. 104), but by s. 3 empowered the court, where *no order* had been made *or resolution passed* for the winding-up of a company, on the application of the company or of any creditor to restrain proceedings against the company upon terms, and to order such meeting of creditors, and sanction such arrangement or compromise as might by s. 2 be ordered and sanctioned in a winding-up. No application or order, however, was to be made under s. 3 after January 1st, 1896—a date extended by 59 Vict., No. 19, until 1898, and by the present Act until January 1st, 1899.

Trust Property.—The Trust Property Amendment Act, 1897 (No. 38), extends the provisions of s. 63 of the Trust Property Act of 1862 as to the vesting of property in a new trustee by virtue merely of the order or instrument appointing him.

[1] As to the provisions of this Act, see *Journal*, vol. i., pp. 29, 42.

[2] Similar provisions were made in Queensland by the Patents, Designs, and Trademarks Act, 1884 (No. 13), Part V., ss. 80, 81; in New Zealand by the Patents, Designs, and Trademarks Act, 1889 (No. 12); in Western Australia by the Act of 1894, 58 Vict., No. 4, ss. 3, 4; and (limited to reciprocity with the United Kingdom) in Tasmania by the Act of 1884, 48 Vict., No. 3; and (with limitation to the United Kingdom and British possessions) in Victoria by the Trademarks Act, 1890, (No. 1146), ss. 31, 32. Orders in Council were made applying the provisions of s. 103 of the English Act of 1883 to Queensland on September 17th, 1885; to New Zealand on February 8th, 1890; to Tasmania on April 30th, 1894; and to Western Australia on May 11th, 1895. No such order has yet (November 8th, 1898) been made with respect to New South Wales.

Artesian Wells.—The Artesian Wells Act, 1897 (No. 41), makes extensive provision for the construction by Government of such wells, and of works in connection therewith, throughout the colony, for the levying of charges to defray the cost, and for the protection of such works.

Vegetation Diseases.—The Vegetation Diseases Act, 1897 (No. 48), provides for the better prevention of the spread of diseases affecting plants, and for the destruction of insects and other pests injurious to vegetation.

7. NEW ZEALAND.

Acts passed—Public, 30; Local, 14; Private, 1.

The legislative activity of the New Zealand Parliament in 1897 was considerably curtailed by a general election. The two measures passed before the dissolution are of a purely transitory character; and when Parliament reassembled there was not sufficient time to deal with any measures of first-rate importance.

Land Tax and Income Tax.—The Land Tax and Income Tax Act, 1897 (No. 4), fixes the rates of land tax and income tax for the year. The rates are the same as in 1895 and 1896.[1] The license fee for non-resident agents is abolished by the Land and Income Assessment Act, 1897 (No. 19).[2]

Validity of Election of Bankrupt.—The Awarua Seat Enquiry Act, 1897 (No. 5), in accordance with the recommendation of a committee appointed to enquire into the matter, referred to the court of appeal of the colony (whose decision was to be final) the question of the validity of the election to a seat in the House of Representatives of a person whose bankruptcy was at the time of the election unannulled, and who had not obtained his discharge.

In consequence of the decision in favour of the bankrupts, a subsequent Act—the Members of the House of Representatives' Disqualification Act, 1897 (No. 11)—disqualified persons who were bankrupts within the meaning of the Bankruptcy Act, 1892, from being nominated as candidates for, from being elected to, and from taking their seats in, the House of Representatives.

Sunday Labour in Mines.—The Sunday Labour in Mines' Prevention Act, 1897 (No. 7), prohibited the employment of workmen in mines on Sunday without the consent of the Inspector of Mines. The inspector is not to give his consent except in cases where he is satisfied that the labour cannot be suspended on Sunday without risk of injury to the mines or its operations. An appeal lies from the decision of the inspector to the

[1] See vol. i., pp. 85, 86.

[2] The license duty was £50, which was imposed on non-resident agents in lieu of income tax (see vol. i., p. 85).

warden of the mining district. A breach of the provisions of the Act entails a penalty of £5; but necessity by reason of breakage or other special emergency involving danger to life or damage to property is to be a sufficient defence.

Explosives.—The Explosive Act Amendment Act, 1897 (No. 9), substitutes the Minister of Defence or other minister appointed to have charge of the administration of the Act as the authority for securing the administration of the Explosives Act, 1882, in lieu of the Commissioner appointed by that Act. Power is also given to the Governor in Council to make regulations as to

(1) The importation of explosives.
(2) The prevention of the importation, manufacture, storage, sale, and transport of explosives too dangerous for use, and the destruction thereof.
(3) The inspection and testing of explosives.
(4) Such other purposes as are necessary for the public safety.

Fisheries.—The Fisheries' Encouragement Act Amendment Act, 1897 (No. 12), extends from seven years to fifteen the time within which bonuses[1] are to be paid for the export of fish.

Public Teachers.—The Public School Teachers' Incorporation and Court of Appeal Act Amendment Act, 1897 (No. 13), amended the Act of 1895 (No. 48).[2] The Act defines what is meant by the dismissal of a teacher and enacts that a dismissal is not to be deemed wrongful if reasonable, having regard to

(1) The efficient and economical administration of the Board's affairs.
(2) The conduct or fitness of the teacher.
(3) Any special circumstances.

Local Loans and Public Works.—The maximum amount which may be lent in a year to a local body under the Government Loans to Local Bodies Act, 1886 (No. 48), may, under the Government Emergency Loans to Local Bodies Act, 1897 (No. 17), be increased to three times that amount if necessitated by fire, flood, or other casualty or special emergency. In such an emergency the proposal for the loan may be carried by a bare majority of the recorded votes. The Act is extended to boroughs for the purpose of restoring or rebuilding bridges destroyed by flood or fire. The Act is not to continue in force beyond March 31st, 1899.

The Consolidated Stock Act, 1884 (No. 41), is amended by the Consolidated Stock Act Amendment Act, 1897 (No. 14). No sinking fund created under the Government Loans to Local Bodies Act, 1886 (No. 48), is to be set free by reason of the conversion of any loan[3] raised under that Act. Fresh debentures may be created for the purpose of paying off matured

[1] The bonus was given by the Fisheries' Encouragement Act, 1885.
[2] See vol i., p. 80.
[3] See the Local Authorities Loans Conversion Act, 1895 (No. 59), vol. i., p. 83.

debentures. Stock is not to be created on debentures issued against the sinking fund of the Government loans to local bodies.

The Aid to Public Works and Land Settlement Act Amendment Act, 1897 (No. 16), authorises the raising of the sum of £250,000 in addition to the sum of £1,000,000 authorised by the Act of 1896. The additional sum is to be expended on

(1) Rolling stock and repairs of open railways.
(2) School buildings in native, newly settled, and other districts.
(3) Technical schools.

Water Supply.—In certain districts the majority required for the adoption of the Water Supply Act, 1891, as amended by the Act of 1892, is altered by the Water Supply Act Amendment Act, 1897 (No. 15), to a bare majority representing three-fifths of the value of the rateable property of the ratepayers who record their votes. The Water Supply Board is to be a local authority for the purpose of the Local Bodies' Loans Act, 1886, the Government Loans to Local Bodies Act, 1886 (No. 48), and the Public Works Act, 1894. County Councils are given the same power of supplying water outside area as is given to water boards under the Water Supply Act Amendment Act, 1895 (No. 35).[1] In certain water districts a meeting of the ratepayers is to be held once a year, at which the Water Board is to submit accounts and report their operations.

Mines.—The Mining Companies Act Amendment Act, 1897 (No. 18), deals first with foreign mining companies. As to these it enacts that every such company, whilst carrying on mining in New Zealand, is under a penalty of £5 a day, during which default is made in complying with the provisions of the Act, to make adequate provision for the registration in New Zealand of transfers of shares and the issue of share certificates. For this purpose a registered office is to be established in the colony for the registration of such persons as apply to be registered there, but a person is not to be registered in the foreign and colonial register at the same time with respect to the same shares.

As to mining companies in general, the Act contains provisions as to forfeiture of shares and the sale of forfeited shares by auction. If no liability attaches to the share, notice is to be given to the holder before it is offered for sale. But if any liability attaches, the share may be sold without notice and without any resolution of the directors or other proceeding fourteen days after a call becomes due, and the proceeds of sale applied towards paying the call.

If a debt is incurred by a "no-liability" company, the directors are made jointly and severally liable for the debt, unless they prove that it was incurred without their knowledge or in spite of their written protest.

Scrip certificates are to be issued by every company to its shareholders,

[1] See vol. i., p. 75.

and no transfer of shares is to be registered by a company till the certificate of the shares has been lodged.

Power of making regulations for carrying out the Act and the Mining Companies Act, 1894, is given to the Governor.

The development of low-grade ores is assisted by the Cyanide Process Gold-extraction Act, 1897 (No. 23), which modifies an agreement between the Cassel Gold Extracting Company and the Government of the colony for the purchase by the latter of the patent rights of the company with respect to the cyanide process.

Land for Settlements.—The duration of the Land for Settlements Act, 1894[1] (No. 37), is extended by the Land for Settlements Act Amendment Act, 1897 (No. 21), to March 31st, 1900. The power of borrowing under the former Act is increased from £200,000 to £500,000. Various minor amendments are also made in the Act of 1894, and provisions regulating the compulsory acquisition of land for the purposes of settlements are enacted. But not more than one hundred acres of land within five miles from Auckland, Wellington, Christchurch, or Dunedin may be taken compulsorily in any one year. The Act of 1897 also amends the Act of 1896[2] (No. 36) as to the development of the lime deposits in the Makareao estate.

Settled Land.—The Leases and Sales of Settled Estates Act, 1865, Amendment Act, 1897 (No. 24), empowers the court, when authorising trustees of settled land to grant leases, to authorise them to insert provisions in building leases for valuation and renewal from time to time ; and trustees previously authorised to grant leases may insert similar provisions in building leases. The Act also empowers the Supreme Court to vary and amend decrees and orders previously made.

Native Lands.—The chief object of the Native Land Laws Amendment Act, 1897 (No. 25), is to enable natives to borrow on the security of their land. For this purpose natives, whether incorporated or not, may convey their land to a Government official as trustee upon such terms as may be agreed. The trustee may, at the instance of the owners, borrow on the security of the land, and apply the proceeds towards discharging incumbrances on the land or towards the general improvement of the land. The public trustee, if satisfied with the security, may lend on the security of such land.

Irrespective of the above provisions, a native owning land in severalty may borrow money on the security of the land from a Government lending department[3] upon obtaining from the native land court a certificate that, irrespective of the land he proposes to mortgage, he has other land sufficient for his maintenance.

[1] See vol. i., p. 77.

[2] See vol. ii., pp. 194, 195.

[3] *I.e.*, the Public Trust Office, the Government Insurance Office, the Commissioner of Public Debts Sinking Funds Office, such other lending departments as may be nominated by the Governor.

Public Reserve.—The Kapiti Island Public Reserve Act, 1897 (No. 28), authorises the Government to purchase the Island of Kapiti for the purposes of conserving its natural scenery, and of providing a preserve for the *fauna* and *flora* of New Zealand.

Victoria College.—The Victoria College Act, 1897 (No. 27), provides for the constitution and endowment of Victoria College in Wellington in commemoration of the sixtieth year of Her Majesty's reign.

The college is incorporated, and is to act by a governing body called the Council.

The Council is to consist of sixteen members: three appointed by the Governor in Council; three elected by members of the Legislative Council resident in the neighbouring provincial districts; three elected by graduates of the New Zealand University who are members of the College; three elected by persons holding certificates under the Education Act, 1877, and resident in the neighbouring provincial districts; three elected by the educational boards in those districts, and one elected by the Professional Board. The term of office is three years, and one member out of each of the first five groups is to retire each year. The Council are to elect a chairman, who is to hold office for one year. The Council have power to appoint and dismiss all professors, lecturers, examiners, officers, and servants of the college, and generally to manage its affairs.

The Professorial Board is to consist of all the professors and lecturers of the college. The Board is to fix the course of study and the hours of lectures, to make regulations as to the attendance of students, to prescribe the subjects for examinations for scholarships, etc. The Board is to be subject to the control of, and to furnish reports to, the Council.

The students are to pay such fees for lectures as are fixed by the Council with the approval of the Governor.

Six Queen's scholarships are to be awarded after examination in each year. Persons of either sex over the age of fourteen may compete. The scholarships are to be held for five years, but may only be held by persons who require assistance to enable them to pursue their studies. The holder must prosecute his studies in a secondary school or its equivalent until he matriculates and he must matriculate within two years and three months from the time when the scholarship was awarded. On matriculation he must enter himself on the books of the Victoria College.

An annual sum of £4000 is charged on the Consolidated Fund by way of endowment of the college, and a block of land is given as a further endowment.

8. BRITISH NEW GUINEA.[1]

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—10.

Fire-Arms.—No. 1, which prohibited the possession of fire arms without a license, was repealed by No. 10 of the same year.

Native Labour.—No. 2 amends the Native Labour Ordinance of 1892.[2] It enables the administrator to proclaim areas as "settled labour districts," and modifies the provisions as to the magistrate before whom labour engagements in such districts must be taken, and extends from twenty-five to sixty miles the distance which natives not formally engaged can be taken in vessels (s. 2). It also (s. 3) makes natives summarily punishable who when duly engaged neglect their work without reasonable cause.

No. 8 provides (ss. 1, 2) for the return to an employer and at his cost of a native engaged labourer convicted of desertion from service, and imposes penalties on persons inducing such labourers to desert (s. 3). It also empowers the administrator to make regulations under the Ordinance of 1892.

No. 9 regulates the duties of natives in the service of the Government,[3] and punishes duly engaged native servants of the Crown who refuse to enter the service or desert or neglect their work. The offenders may be arrested without warrant and imprisoned, or returned to their service, and forfeit the wages for so much of their service as is lost by the offence.

Customs.—No. 3 amends the Customs Amending Ordinance of 1889 (No. 7) by imposing a duty of 14*s.* a gallon on spirits.

Fisheries.—No. 4 amends the Pearl Shell and Bêche-de-Mer Fishery Ordinance of 1894 (No. 4) by prescribing the minimum size of pearl shell which can be lawfully taken or dealt in (s. 3).

Gold-Fields.—No. 5 amends the Queensland Gold-Fields Act of 1878 as adopted in 1888 (No. 7). It provides for the continuance by proclamation of a gold-field as a "new gold-field" for a period during which African and Asiatic aliens are not allowed to acquire miners' rights therein.

Birds.—No. 6 prohibits the destruction or capture of birds by collectors without a license granted for the purpose to the collector, for which the duty is £5; and to his shooting assistants, for which the duty is £1.

Appropriation.—No 7 is an appropriation Ordinance.

[1] See *Journal*, vol. ii., p. 203.

[2] No. 2. The policy of this Ordinance was to prevent the employment or removal of aboriginals except under public supervision.

[3] Government service is excluded from the Ordinances last dealt with (1892, No. 2, s. 3).

9. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—9.

Appropriation.—Nos. 1 & 6 are appropriation Ordinances.

Oaths.—No. 2 adapts to the colony the Imperial Oaths Act, 1888 (51 & 52 Vict., c. 46).

Animals.—No. 3 prohibits under penalties the importation of the mongoose.

Disturbed Districts.—No. 4 repeals an Ordinance of 1876 (No. 29) which restricted travelling in certain districts of Viti Levu, which had then lately been disturbed by a native rising.

Post Office.—No. 5 amends the postal Ordinance, 1877 (No. 28), by enactments giving effect to the regulations of the Convention of Vienna (July 4th, 1891)[1] for the prevention of the fraudulent manufacture or use of counterfeit or used postage stamps of any state which is a party to the International Postal Union. The Post Office is *inter alia* entitled to detain packets bearing such stamps until the addressee supplies information as to the origin and nature of the packet.

Native Lands.—No. 7 amends the Native Lands Ordinance, 1896 (No. 7),[2] by repealing s. 1, and adding to s. 7 of the Lands Ordinance of 1892 (No. 21) a clause enforcing penalties on summary conviction for wilfully interrupting an enquiry under the act or misbehaving during its course.

Arms and Warlike Stores.—No. 8 extends the Warlike Stores Exportation Ordinance, 1896 (No. 8),[3] so as to prohibit attempts to ship or carry such stores out of the colony.

Gaming Houses.—No. 9 repeals s. 30 of the Summary Conviction Offences Ordinance of 1896 (No. 17), and makes fresh provision for the suppression of houses, rooms, or places opened, kept, or used "for the purpose of unlawful gaming being carried on therein." The Ordinance is in the main a redraft of the Imperial Gaming Act, 1845 (8 & 9 Vict., c. 109), and Gaming House Act, 1854 (17 & 18 Vict., c. 38).

10. WESTERN PACIFIC.[4]

[*Contributed by* W. F. Craies, Esq.]

Regulations passed—9.

Contagious Disease.—Regulation No. 1 is framed to prevent the introduction into the British Solomon Islands of contagious disease, defined as

[1] *Hertslet*, vol. xix, p. 325.
[2] *Journal*, vol. ii., p. 201.
[3] *Journal*, vol. ii., p. 202.
[4] As to the mode of legislation for this area, see *Journal*, vol. ii., p. 202.

meaning and including "cholera, small-pox, scarlet fever (scarlatina), oriental plague, typhoid fever, typhus fever, yellow fever, measles, and any disease the nature of which is doubtful so far as its being one of the aforesaid diseases or not."

A system of quarantine is provided for all vessels arriving except those coming with a clear bill of health from other Australasian colonies or Tonga, Samoa, or New Caledonia. Vessels from other ports must go to the seat of government and perform quarantine till pratique is granted. Vessels from German Pacific Colonies are put under special regulations (s. 4). Reports of disease are required from the master or surgeon of vessels (ss. 9, 10).

Bills of Sale.—No. 2 provides for the registration in Samoa of bills of sale on chattels (when not accompanied by permanent delivery of possession of the chattels). The regulation contains no scheduled form, but prescribes conditions of validity.

No. 6 deals with the registration and validity of bills of sale in Tonga,[1] and the Gilbert,[2] Ellice, and British Solomon Islands.[3] The right to seize the chattels is limited to the events specified in s. 7. The Act follows pretty closely the Imperial Acts of 1878 and 1882, but has no scheduled form.

Tanaha.—Nos. 3 and 5 provide for raising a total revenue on the British Solomon Islands.[4] This is effected by the following taxes:—

(*a*) A capitation tax on all male non-native residents (except ordained ministers of religion) between sixteen and sixty who have resided for two months on the island or on a vessel trading. The license is £5 a year or £3 a half-year.

(*b*) A station license for every trading station, costing £10 a year or £6 a half-year.

(*c*) A ship license for all ships trading within or to the Protectorate. It was annual or half-yearly. The annual license is computed on the tonnage at £1 a ton, not exceeding £100. The half-yearly license is at 12*s.* a ton, not exceeding £60. Ships, boats, and certain vessels used for royal naval purposes are exempt.

Under Regulation No. 9 a local revenue for the Gilbert group is created by the imposition of a duty of £12 for a trading license for every separate person engaged in trading on shore.

Fire-Arms.—No. 4 restricts the sale and use of fire-arms in the British Solomon Islands. Sale to the natives is forbidden, and ships may be examined by a peace officer to see what arms are on board (ss. 4-11). A license is necessary for possession of arms in the Protectorate (ss. 13-18). Labour ships are permitted to carry a limited amount of fire-arms and ammunition for their protection (s. 12).

[1] See *Hartslet*, vol. xv., p. 396; vol. xix., p. 847.

[2] Protectorate established May 27th, 1892 (*Hartslet*, vol. xix., p. 569).

[3] See Pacific Order in Council, 1893, s. 6.

[4] These duties were altered in 1898, Regulation No. 1.

Native Labour.—Regulation No. 7 regulates the recruiting of native labourers in the British Solomon Islands, and their employment there, or beyond the limits of the Protectorate. Labour ships must have licenses granted by the High Commissioner or another Australasian Government.[1] Elaborate provisions are made as to inspection, feeding, wages, treatment, and return of the labourers.

Inebriates.—Regulation No. 8 provides for the issue of orders prohibiting persons on the Gilbert or Ellice groups who are of confirmed intemperate habits from drinking or possessing intoxicating liquor.[2] If they disobey the order they are liable to summary conviction, as are persons who supply them, except for medical purposes. A list of prohibited persons is exhibited in the court-houses of the island.

V. SOUTH AFRICA.

1. CAPE OF GOOD HOPE.[3]

[*Contributed by* Sir Courtenay Ilbert.]

Acts passed—29.

Lunacy.—The Lunacy Act, 1897 (No. 1), is a comprehensive Act of seventy-eight sections, which contains provisions corresponding to those of the English Lunacy Act, 1890, and also deals with criminal lunatics, and what are called "Governor's pleasure lunatics"—*i.e.*, lunatics against whom a criminal charge has been made and who are detained in custody during the Governor's pleasure.

Cattle Disease.—The Animals' Diseases Rinderpest Amendment Act, 1897 (No. 2), gives power to regulate the movements of persons and animals, and powers of entry for the purpose of inoculating cattle, and authorises the appointment of local rinderpest committees. The powers and functions of these committees are further defined by the Local Rinderpest Committees Powers Act, 1897 (c. 12).

Cruelty to Animals.—The Cruelty to Animals Act, 1897 (No. 3), enables an officer of the Society for the Prevention of Cruelty to Animals to be appointed as a special constable, with limited powers for taking proceedings under the Cruelty to Animals Act, 1888.

Cattle Brand.—Under the Brands' Registration Act, 1890, there is a register of brands for horses, cattle, and ostriches. The Brands' Registration

[1] See Pacific Islanders Protection Acts, 1872 and 1875.

[2] By Regulation No. 2 of 1898 a right of appeal to the High Commissioner is given against all orders made under the regulation of 1897.

[3] The Session 60 Vict. ended in June 1897.

Amendment Act, 1897 (No. 4), provides for registering brands for sheep and goats.

Customs.—The Customs Amendment Act, 1897 (No. 8), contains a long list of articles which are respectively subject to and exempt from Customs duties on importation into the colony.

Public Debt.—The Sinking Fund Commissioners Act, 1897 (No. 11), provides for the appointment of Commissioners for the reduction of public debt with duties corresponding generally to those of the National Debt Commissioners in England.

Public Health.—The Public Health Amendment Act, 1897 (No. 23), supplements the Public Health Act, 1883, and contains several important provisions. It requires urban authorities to make bylaws or regulations for the suppression of nuisances, for compelling residents to keep their premises free from offensive, infectious, or unwholesome matter, for protecting water from pollution, and for the regulation of slaughter houses, the inspection of imported meat, and the sale of unwholesome meat. If a local authority fail to make such regulations as in the opinion of the Minister are necessary for these purposes, the Governor may proclaim such regulations as he thinks necessary, and these are to have the force of law. If a local authority fail to carry out the regulations, the Governor may do so at the expense of the rates (ss. 7, 8). Urban authorities are empowered, but not required, to make regulations for a number of other matters relating to public health (s. 9).

"In cases of urgent necessity arising from the prevalence or threatened outbreak of a contagious or infectious disease," the Minister may proclaim regulations which are to have the force of law until repealed or amended by the Governor (ss. 15, 16). There are provisions for the inspection of dairies in the case of suspected spread of infectious disease, and power to prohibit the supply of milk from suspected dairies in such cases.

If it appears to the Governor that better provision for the prevention of the spread of infectious disease would be likely to result, and that action is urgently required, he may temporarily place any area within the local limits of the community under the Villages Management Act, 1881, under the jurisdiction of a divisional council, and transfer the powers of the village authority to the divisional council.

The Act requires children to be vaccinated within three months after birth, but apparently does not specifically impose a penalty on the parent for failure to have his child vaccinated (ss. 39-43).

A health officer may inspect a vessel and question persons on board whenever it appears to him to be necessary and advisable to do so for the purpose of ascertaining the existence of any cause of infection or contagion on board the vessel, and may after inspection either detain the vessel in quarantine or give her pratique.

Port Elizabeth Municipal Corporation.—The Port Elizabeth Municipal

Act, 1897 (No. 27), is an Act of 233 sections, which consolidates the law relating to the municipal corporation and government of Port Elizabeth, and would in England be treated as a local Act. It is a good specimen of a Colonial municipal Act.

Native Territories.—The Transkei Territories Tembuland and Pondoland Laws Act, 1897 (No. 29), which has been reserved for Her Majesty's pleasure, appears to have been passed with reference to the case of Sprigg *v.* Sigcau (1897), A.C. 238, in which it was held on appeal from the Cape that a power for the Governor to add to the existing laws already proclaimed and in force in Pondoland such laws as he should from time to time by proclamation declare to be in force in those territories, did not authorise the issue of a proclamation for the arrest and imprisonment of a particular chief. It enables the Governor by proclamation to authorise the summary arrest and detention in such places and subject to such conditions as he may appoint of any persons whom he is satisfied to be dangerous to the public peace if left at large, but the person arrested may apply for his release to the Supreme Court. The Act also validates previous proclamations by the Governor, except that it is not to give validity to the proclamation whereunder in the year 1895 the Pondo Chief Sigcau was arrested and detained.

2. NATAL.[1]

Acts passed—33.

Immigration.—The Immigration Restriction Act, 1897 (No. 1), prohibits the immigration into Natal by land or sea of any person described in the Act as a "prohibited immigrant." The persons so described are:

(*a*) Any person who when asked to do so by an officer appointed under the Act fails to himself write out and sign in the characters of any language of Europe an application to the Colonial Secretary in the form scheduled to the Act.

(*b*) Any person being a pauper or likely to become a public charge.

(*c*) Any idiot or insane person.

(*d*) Any person suffering from a loathsome or dangerous contagious disease.

(*e*) Any person who not having received a free pardon has within two years been convicted of a felony or other infamous crime or misdemeanour involving moral turpitude, and not being a mere political offence.

(*f*) Any prostitute and any person living on the prostitution of others.

If a prohibited immigrant is found in the colony he may be removed from the colony, and on conviction be sentenced to six months' imprison-

[1] The Fifth Session of the First Parliament ended in May 1897.

ment, which, however, is to cease for the purposes of his deportation or if he finds two approved sureties in £50 each that he will leave the colony within one month. A person appearing to belong to class (*a*) or (*b*) may be allowed to enter the colony on condition of depositing £100 and obtaining within one week from the Colonial Secretary or a magistrate a certificate that he does not come within the prohibitions of the Act. If he gets this certificate the deposit is returned. If he fails to do so the deposit may be forfeited, and he may be treated as a prohibited immigrant. The master and owners of any vessel from which a prohibited immigrant is landed are jointly and severally liable to a penalty of not less than £100, and this may be increased up to £5000 by sums of £100 each for every five prohibited immigrants after the first five.

The vessel may be "executable" by a decree of the Supreme Court in satisfaction of the penalty, and may be refused a clearance outwards until the penalty has been paid and until provision has been made to the satisfaction of an officer appointed under the Act for the conveyance out of the colony of each prohibited immigrant who has been so landed. A prohibited immigrant is not entitled to a license to carry on any trade or calling, or to acquire land, or to exercise the franchise, or to be enrolled as a burgess of any borough or on the roll of any township. Officers authorised by the Government may enter into contracts for the return of prohibited immigrants. There are penalties on persons who assist prohibited immigrants to contravene the Act. The Governor is empowered to appoint persons for the purpose of carrying out the provisions of the Act and to define their duties.

Act No. 14 amends the Indian Immigration Amendment Act, 1895, on various points, and in particular restores to Indian immigrants who have entered the colony otherwise than under the provisions of the Act of 1895 the right of free passage back, which appears to have been taken away from them by that Act.

Act No. 28 authorises the grant of passes to uncovenanted Indians for the purpose of protecting them from arrest in mistake for absconding unindentured Indian servants.

Quarantine.—Act No. 2 authorises the Governor to prohibit the landing of persons from any ships coming from a place proclaimed as an infected place. Any person landing in contravention of the Act is, if practicable, to be returned at once to the ship by which he came, and the master of the ship is bound to receive and convey him from the colony.

Native Code.—Act No. 8 makes any offence under the Indian Native Code for which a special penalty is not provided punishable with fine or six months' imprisonment, or whipping, or a combination of those penalties.

Coroners.—The Borough Inquests Act, 1897 (No. 10), authorises the town council of any borough, with the approval of the Governor in Council, to appoint a borough coroner.

Marriage.—Act No. 15 legalises marriage with a deceased wife's sister.

It is retrospective in its operation, and applies to "any marriage heretofore or hereafter contracted within this colony or without." No minister of religion is to be liable to any pains or penalties for refusing to solemnise any marriage made valid by the Act.

Copyright.—The Copyright Act, 1897 (No. 17), repeals and re-enacts with modifications the Copyright Act, 1896. The term of copyright in a book is to be life and seven years, or forty-two years, whichever is longer, instead of life and five years, or thirty years. The term of copyright in posthumous books is also extended to forty-two years. There is to be copyright in works of art for life and seven years.

Water Supply.—The Village Water Supply Act, 1897 (No. 19), enables the Governor, on application by three-fourths of the resident householders of a village, to take and exercise large powers of entry and construction of works for the purpose of supplying water to the village.

Pensions.—Act No. 26 enables the Governor in Council to require officers over the age of fifty years to retire on a pension.

Act No. 29 establishes a fund which is to be called the Superannuation Fund, and which is to consist of a percentage deduction from the salaries and wages of contributors, and of an equal sum to be paid by the Government in each half-year, subject to a maximum liability. Any person in the public employ not entitled to a pension or retiring allowance under any other law or scheme, if of sober habits and not afflicted with any disease likely to shorten life, may be admitted as a contributor to the fund by the Minister in whose department the control of the fund is placed. The Act lays down a scale on which the superannuation allowances are to be granted. Contributors dismissed for dishonesty or fraud are to forfeit all their rights, but other contributors on leaving the service are to get their contributions back with or without simple interest according to circumstances.

Cattle Disease.—The Lung Sickness Prevention Act, 1897 (No. 30), deals with the disease known in England as pleuro-pneumonia.

VI. WEST AFRICA.

I. SIERRA LEONE.

[*Contributed by* A. Gray, Esq.]

Ordinances passed—17.

Special Commission of Enquiry.—The recent insurrection in this colony has occasioned the despatch of a Special Commissioner, who is instructed to examine how far the origins of this rebellion are traceable to recent legislation.

An examination of the Ordinances of 1897 may afford signs of coming trouble.

Postmaster-General, Title of.—By Ordinance No. 2 Bibles are freed from import duty; by No. 3 the "Colonial Surveyor" becomes the "Director of Public Works"; and by No. 4, which, like many other legislative provisions, seems senseless until you know the reason why, the Postmaster-General of Sierra Leone is henceforth to be known as the "Colonial Postmaster-General of Sierra Leone." Let our readers exercise their ingenuity upon the conundrum.

Protectorates.—Much interest attaches to legislation for protectorates, in which the touch of civilisation is cautiously applied to matters barbaric; and this department of the Sierra Leone laws rarely fails to afford subjects of observation and useful comment. The Protectorate Ordinance, 1897 (No. 11), of which more is likely to be heard hereafter, has three main divisions—Courts, Slave-dealing, and Taxation.

(i) **Native Chief Courts.**—The Protectorate courts are:

(1) The Court of the Native Chiefs;

(2) The Court of the District Commissioner and Native Chiefs; and

(3) The Court of the District Commissioner alone.

To the first are assigned all civil cases between natives,[1] and all criminal cases between natives other than murder, rape, witchcraft, slave-raiding, slave-dealing,[1] cannibalism, the operations of the Human Leopard and Alligator Societies, and faction or tribal fights. The second or mixed court has criminal jurisdiction—viz., in cases of murder, rape, cannibalism, and the acts attributed to the above-named mysterious and murderous associations. To the Court of the District Commissioner sitting alone are reserved land cases and cases arising between natives and persons who are not natives; all non-capital crimes where the accused is not a native; and all cases of witchcraft, slave-raiding, slave-dealing, faction or tribal fights, whether the accused is a native or not.

When a person not a native is accused of murder, the District Commissioner is to hold an examination and commit the accused for trial before the Supreme Court of the colony.

The native courts are to be guided as far as possible by the laws in force in the colony.

In civil cases involving more than £25 there is an appeal to the Supreme Court.

(ii) **Hearing Counsel or Attorneys.**—In none of the Protectorate courts are counsel or attorneys entitled to be heard except in capital cases, unless the District Commissioner gives special leave.

(iii) **Slavery.**—The next part declares all dealing in slaves to be unlawful, declares every slave brought within the Protectorate to be free, and as regards existing slaves provides for the purchase of freedom at a price to be fixed by the Governor, not exceeding £4 for an adult and £2 for a child.

[1] An exception of land cases was removed by a subsequent Ordinance of the same Session (No. 15).

More attention must be given to the taxation provisions. The Protectorate is subjected to the Customs laws of the colony. Then come the House Tax clauses, which run as follows:—

Native House Tax.—"43. From and after the 1st day of January, 1898, every chief, in respect of every house other than a house owned or occupied by any person not a native, or a person in the service of the Government, situate in any town or village in which he may have jurisdiction, and every person other than a native or a person in the service of the Government residing in the Protectorate in respect of every house owned or occupied by him, shall, save as hereinafter provided, be bound to pay to the District Commissioner, or to some person nominated by him, an annual house tax. And such tax shall be assessed on all houses owned or occupied at any time during the year next preceding that in respect of which such tax is payable.

"44. The liability of any person for payment of the house tax shall be computed according to the number of rooms in each house, and they shall be taxed as follows:—

"(*a*) For each house with four or more rooms, 10*s*. per annum.

"(*b*) For each house with three or any less number of rooms, 5*s*. per annum."

The house tax is payable on January 1st; and when a chief has paid the full amount to which he is liable, he is entitled to a rebate of 5 per cent. on the amount so paid. Payment must be in coin, unless the collector "has no alternative but to accept grain stock, merchandise, or produce," in which case the values at the nearest available market are to be taken.

Store Licenses.—The Ordinance next deals with "store licenses"—*i.e.*, licenses to trade, which cost the applicant £2 per annum, or £1 5*s*. for half a year.

Then with spirit licenses, one provision being that it is unlawful to give any spirits to a native.

Among the miscellaneous provisions is one of doubtful expediency enabling the Governor to exempt any town, village, or house from the house tax.

The District Commissioner is authorised to settle "any matters which have their origin in *Poro* laws, native rites or customs . . . which if not promptly settled might lead to breaches of the peace." Has he to decide on the efficacy of fetish?

The Governor, with the approval of the Secretary of State, may depose any chief who is in his opinion unfit for the position, and appoint his successor.

The Protectorate Ordinances of 1896 (Nos. 20, 29, and 34), on which we commented last year, are repealed by this one.

Fetishes.—A subsequent Ordinance (No. 14) brings us again in contact with *Poro* or fetish. Its intention is to safeguard traders as well from threats of actual violence as from the subtler and more malign influences of fetish. An offence is committed by "any person who, by having recourse to any kind

of *Poro* laws or customs, native fetish trickery or device whatsoever, intimidates, hinders, or interrupts any person from gathering, buying, selling, or otherwise disposing of his produce," etc.

Extra Constables—The last Ordinance of the session (No. 17), passed on December 15th, 1897, provides for the enlistment of supernumerary constables. This was the first sign in legislation of the existence of rebellion.

2. LAGOS.

[*Contributed by* A. Gray, Esq.]

Ordinances passed—18.

Railways.—The Railway Ordinance of 1896, which was noticed in our review of the legislation of that year, has evidently proved insufficient, as was to be expected. It is now replaced by Ordinance 4 of 1897, which incorporates the Public Lands Ordinance of 1876. The Government can enter on any lands, public or private, on giving the proper notices under that law. For purposes of temporary works, stopping up roads, they can apparently without notice enter upon any lands within two hundred yards of the lands appropriated, and execute any works deemed necessary, paying compensation as assessed. Provisions as to offences, bylaws, etc., complete this somewhat simple measure.

Fire Commissioners.—By the Fire Ordinance, 1897 (No. 9), a body of four Fire Commissioners is constituted for the purpose of suppressing and preventing fires in the town of Lagos. They are to have the aid of the police force, and they may take the command of any volunteer fire brigade. The expenses incurred are payable out of the revenues of the colony.

Public Surveyors.—The Survey Ordinance, 1897 (No. 10), authorises the Governor to appoint public surveyors, and to license private surveyors for the survey and demarcation of lands and for the preparation of maps showing the holdings in districts.

Uniforms.—An amendment of the Uniforms Ordinance, 1895, provides for the punishment of persons using without authority any uniform, dress, badge, etc., calculated to convey the impression that he holds any office or authority under the Colonial Government.

Police Force.—The Ordinances relating to the Police Force of the colony and Protectorate are consolidated by Ordinance No. 14. As in other colonies, with a hinterland only partially settled, the force combines police and military duties, and provision is made for its service in the field under officers of Her Majesty's army.

3. GAMBIA.

[*Contributed by* A. GRAY, ESQ.]

Ordinances passed—18.

The Ceded Mile.—The Ceded Mile Administration Ordinance, 1896, noticed in our last year's review, seems to have given rise to some doubts of construction. The ceded mile is part of the Queen's dominions, but the Colonial Government finds it convenient to govern it under the laws relating to the Gambia Protectorate. The law of 1896 merely applied the Protectorate Ordinances, and reserved Her Majesty's rights of sovereignty. A new law (Ordinance No. 1) is now substituted, and effects a compromise between Colonial and Protectorate law. The Colonial laws are to apply so far as they are not inconsistent with the Protectorate laws applied. Of the latter, the Trade License Ordinance of 1895 is no longer to apply in the ceded mile. For purposes of the Colonial laws the Commissioner of the Protectorate territory is to exercise the powers of two justices of the peace.

Licenses to Farm.—In order to encourage cultivation in British Kommbo, licenses to farm may be granted (Ordinance No. 2) at very moderate annual rents. The license is described as a "bare, untransferable license," and is expressly stated not to confer any proprietary or possessory rights.

Postal Laws.—The postal laws of the colony are consolidated by Ordinance No. 6. It is normal in form, but properly leaves much to executive regulation.

Emigrants.—Emigrants from the colony are further protected by Ordinance No. 7. It imposes proper restrictions on ships carrying more than twenty-five steerage passengers. Emigration agents must be licensed (£5), and the agents must pay a fee of 4*s.* for every person they induce to emigrate.

Accused Persons as Witnesses.—The Gambia colony has anticipated the United Kingdom in giving defendants in criminal proceedings the power of appearing as witnesses. The Ordinance (No. 10) is not hedged round with the provisos of the recent British Act: "The accused and the husband or wife of the accused shall be competent, but not compellable, to give evidence." A second clause provides that any person so offering himself as a witness shall take the oath and be examined, and may be cross-examined as an ordinary witness.

Possession of Property Stolen Abroad.—Following Imperial legislation, the colony makes it an offence, punishable with seven years' imprisonment, to receive or possess in the colony any property which he knows to have been stolen abroad.

The other Ordinances relating to details of summary procedure and matters of public health do not call for any special remark.

4. GOLD COAST.

[*Contributed by* A. Gray, Esq.]

Ordinances passed—23.

Peace Preservation.—The first law meriting notice is a Peace Preservation Ordinance (No. 6) of quite an Irish complexion. There are provisions for proclamation of districts, heavy penalties for riot, costs of additional constabulary, etc. Probably in connection with this law, which betokens unrest, a subsequent Ordinance (No. 8) authorises the Governor to depose certain political offenders who have been disturbing the public peace.

Book and Newspaper Registration.—The Book and Newspaper Registration Ordinance (No. 14) is a tardy recognition of an Imperial desideratum. Three copies of every book published in the colony are to be sent to the Governor, of which one is to go to the British Museum.

Compulsory Labour.—The Compulsory Labour Ordinance of 1895, which was noticed in our review for that year, and which was due to expire in December 1897, was renewed for another year.

Native Customs: Fetishes.—The Native Customs Amendment Ordinance, 1897 (No. 23), again introduces us to the realm of African fetish. It amends in some particulars the Ordinance of 1892, under which a number of specified and unspecified native customs were prohibited or controlled. It is curious to find in the interpretation clause such definitions as the following:—

"'Tribal emblem' includes any drum, bell, head-dress, stool, figure, badge, fetish charm, or other thing having a symbolic meaning.

"'Fetish priest' means any person who has the custody of any fetish or fetish charm which is worshipped, or who controls or takes the principal part in any fetish worship, or who pretends to be able to evoke the power of any fetish, and includes the priests known as Dseme or Jeme.

"'Krobo customs' means any one or more of the customs known as Kotoklo, Nadu, Kokonadu, and Otufu or Dipo."

VII. SOUTH ATLANTIC.

FALKLAND ISLANDS.

[*Contributed by* Sir Courtenay Ilbert.]

Ordinances passed—10.

Cattle Disease.—Ordinance No. 1 amends the Scab Ordinance, 1895 and requires the branding of sheep afflicted with scab. The Ordinance of 1895 is further amended by Ordinance No. 9 of 1897.

Customs.—The Customs Ordinance, 1897 (No. 3), consolidates the law relating to the Customs duties in the islands.

Protection against Fire.—The Local Rates Ordinance (No. 5) imposes a rate of 9*d.* in the £ on house property to provide means of protection against fire. The Stanley Fire Brigade Ordinance (No. 7) establishes a volunteer fire brigade, and contains sundry provisions for protection against fire.

VIII. NORTH AMERICAN COLONIES.

1. BRITISH COLUMBIA.[1]

[*Contributed by* Walter Peacock, Esq.]

Acts passed—77.

The legislation of the past year anticipates a large increase of population and commercial activity in consequence of the recent discovery of extraordinary mineral wealth in the province.

Company Law.—The Company Law has been consolidated in the Companies Act, 1897 (c. 2), which is based on the (Imperial) Companies Acts, 1862, 1867, and 1877, omitting the clauses dealing with winding-up, the Forged Transfers Act, 1891, and the Directors' Liability Act, 1890. The Provincial Act is divided into ten parts, of which I., II., and IV. are, broadly speaking, a transcript of I., II., and III. of the (Imperial) Companies Act of 1862. III. reproduces the sections in the (Imperial) Companies Act of 1867, which deal with calls, subdivision of shares, share-warrants to bearer, and reduction of capital. V. empowers companies to borrow money and secure repayment. VI. and VII. compel the licensing and registration of extra-provincial companies before they may carry on business within the province. VIII. deals with voluntary winding-up, a verbal transcript of ss. 129 and 139 of Imperial Act of 1862. IX. protects purchasers from losses by forged transfers and fraudulent and negligent practices, reproducing s. 1 of (Imperial) Forged Transfers Act, 1891, as amended by the Act of 1892, s. 4 of the latter Act, and ss. 3-5 of Directors' Liability Act, 1890. X. repeals former enactments. The Companies Clauses Consolidation Act, 1897 (c. 3), is an almost literal transcript of the (Imperial) Companies Clauses Consolidation Acts of 1845, 1863, and 1888, with a slight rearrangement of clauses.

Compensation.—Compensation is dealt with in the Lands Clauses Consolidation Act, 1897 (c. 20), which is a slightly adapted transcript of the (Imperial) Lands Clauses Consolidation Acts, 1845 and 1860, omitting certain clauses relating to entry upon lands, false evidence, and all the clauses respecting copyhold and waste lands.

[1] The Session 60 Vict. ended on May 8th, 1897. Of the seventy-seven Acts passed the first forty-five are classed as public, the remainder as private.

Public Works: Railways, Roads.—The British Columbia Public Works Loan Act, 1897 (c. 24), in anticipation of a large and sudden increase of population, authorises the Lieutenant-Governor in Council to raise a loan not exceeding two and a half million dollars to be applied in grants of subsidies on certain terms to new railways; the balance (if any) to be applied towards the construction of roads and other public works.

Dykes.—The Dyking Debenture Act, 1897 (c. 12), empowers the Lieutenant-Governor in Council to raise a loan for redeeming certain debentures bearing a high rate of interest, issued under the authority of the Drainage and Dyking and Irrigation Act, 1894; and also to raise a further sum for strengthening and repairing certain dykes.

Water Supply.—The Water Clauses Consolidation Act, 1897 (c. 45), confirms to the Crown all unrecorded water, and regulates the supply of water for

(1) Agricultural and Mining Purposes. Owners of land and mine-owners, on observing certain formalities and obtaining a record from the Commissioner, may secure the right to unrecorded water, or recorded water which is not in use or unnecessary. Owners of placer-mines are entitled to an allowance of water where all the water above them is recorded. Indians on any Indian reserve are entitled to a record of so much unrecorded water as may be necessary for domestic and agricultural purposes.

(2) Waterworks System. Municipalities may obtain record of unrecorded water as a source of supply for a projected waterworks system, or where the supply is insufficient may, with the approval of the Lieutenant-Governor in Council, expropriate so much recorded water as may be necessary. Power is also given to municipalities to expropriate land for a waterworks system, to acquire existing waterworks systems from waterworks companies, to construct reservoirs, and to enter upon lands to cut and dig up and lay down pipes.

(3) Industrial Purposes. Specially incorporated companies called power companies may acquire water to be applied for certain industrial purposes, such as hydraulic mining, general irrigation, generating electricity, etc.

Administration of Justice: Boundaries.—The Counties' Definition Amendment Act, 1897 (c. 5), empowers the Lieutenant-Governor in Council, for the purpose of providing more effectually for the administration of justice, to constitute by Order in Council a new county, to be known as the County of South Kootenay, to which all the provisions of the Counties' Definition Act, 1895, are extended.

(County Courts).—The County Courts Act Amendment Act, 1897 (c. 6), repeals s. 5 of the County Courts Act Amendment Act, 1896, and makes new provisions with regard to appeals.

(Small Debts).—The Small Debts Act Amendment Act, 1897 (c. 7), provides in the case of execution returned *nulla bona* for the filing by the Registrar of the County Court of a transcript of the judgment, upon which the plaintiff or defendant may pursue the same remedy as if the judgment were originally obtained in the County Court. Provision is also made for the appointment of a Clerk of the Court.

(Supreme Court).—The Supreme Court Amendment Act, 1897 (c. 8), regulates the sitting of the judges of the Supreme Court as a Full Court for the hearing of appeals.

(Crown Franchises).—The Crown Franchises Regulation Act, 1897 (c. 9), enables the Attorney-General of British Columbia to proceed against persons misusing or usurping certain offices, and against any corporation contravening its Act of Incorporation or forfeiting its franchise by non-user.

Statute Law Revision.—C. 41 provides for the revision and consolidation of the law of the province, including the Statute Law of England in force and applicable therein.

Trustees.—The Trustees and Executors Amendment Act, 1897 (c. 44), provides for the remuneration of trustees and executors, the removal of trustees appointed by the court at the request of the *cestuisque trust*; and enables executors, where the deceased has entered into a contract for the sale of real estate, but has not provided by will for the conveyance, to execute a good and sufficient conveyance to the person entitled. Where estate is insufficient to pay, a trustee may make a declaration and become trustee for creditors.

Municipalities.—The Speedy Incorporation of Towns Act (c. 16) empowers the Lieutenant-Governor in Council, without requiring the inhabitants to observe the provisions of s. 2 of the Municipalities Incorporation Act, 1896, by letters patent to incorporate into cities certain tracts of land thereafter to be known as the "City of Nelson," the "City of Rossland," the "City of Grand Forks." Other clauses relate to the qualification for municipal office, the powers of municipal councils with regard to sewage, expropriation of water, etc., and the exemption of mineral lands from municipal taxation.

Police.—The Municipal Clauses Act Amendment Act, 1897 (c. 30), extends the series of matters with which the councils were empowered by the Act of 1896 to deal by bylaws. It is declared to be the duty of every municipality to provide a permanent police force, and to maintain law and order within its limits. The amendment, however, consists for the most part of slight and verbal alterations.

Qualification of Electors.—The Municipal Elections Amendment Act, 1897 (c. 31), amends the Act of 1896 as to the qualification of electors.

Labour.—The Alien Labour Act, 1897 (c. 1), prohibits the employment of Chinese and Japanese on certain works.

Master and Servant.—The Master and Servant Act, 1897 (c. 26), provides

that no voluntary contract of service shall be binding on either party for more than nine years from date of contract. Agreements may be made between the master and his employés for the latter to share in the profits without creating any relation in the nature of partnership between them. After the termination of an engagement between master and servant, all disputes arising between them as to the length of the term of engagement may be heard by a justice of the peace, if proceedings are brought within one month.

Hospitals for Insane.—Hospitals for Insane Act, 1897 (c. 17), provides for the establishment of public hospitals for insane persons. The officers of the Public Hospital consist of a Medical Superintendent, who has control of the medical treatment of patients; and a subordinate steward, who manages the financial business. No person is to be removed into any hospital except by

(1) An order of the Lieutenant-Governor in Council;

(2) An order of a judge or magistrate, together with two medical certificates and a statement of particulars as to age, habits, delusions, etc., of the patient furnished by a relative; or

(3) In certain cases under an urgency order, with one medical certificate.

Suspected dangerous lunatics may be apprehended under warrant of a magistrate or justice, and committed to the common gaol until enquiry, which must be made within three days, is made into the alleged insanity. If on enquiry the magistrate is satisfied that the prisoner is insane, and dangerous to be at large, he may commit him to the common gaol, there to remain until duly committed to a public hospital for insane or discharged by law. Persons confined under this Act may be discharged or committed, absolutely or conditionally or temporarily, to the care of other persons by the Lieutenant-Governor in Council or by the Medical Superintendent.

Mines and Minerals: Inspection.—The Inspection of Metalliferous Mines Act, 1897 (c. 27), authorises the Lieutenant-Governor in Council to appoint an Inspector of Metalliferous Mines, of seven years' practical experience in mining, whose duties shall consist of examining and, when required to do so by the Minister, reporting upon the ventilation and sanitary condition of mines. Any practice he considers dangerous he may order to be remedied. The employment under ground of females, boys under sixteen, Chinese and Japanese, is prohibited. A return of the ore wrought and the number of persons employed above or below ground must be made by the owner of every mine. With a view to securing the safety of miners, the Act lays down certain general rules to be observed in every mine as to ventilation, storing of explosives, etc.

(Surface Rights).—The Mineral Act Amendment Act, 1897 (c. 28), slightly amends the Act of 1896 as to the mode of staking out claims. S. 26 of the Act of 1896, by which the owner of a mineral claim was entitled to all surface rights so long as he held the claim for developing the minerals, is repealed,

and a clause is substituted giving the owner the use and possession of the surface of his claim, including timber, for the purpose of getting out the minerals; but all remaining surface rights are vested in the Crown. The grantee of a mineral claim located on waste lands, however, may purchase the surface rights.

(**Placer Mining**).—The Placer Mining Act (1891) Amendment Act, 1897 (c. 29), amends the Act of 1891 as to the extension of leases and consolidation of leases held as creek claims.

Revenue.—The Revenue Tax Act Amendment Act, 1897 (c. 39), amends the Provincial Revenue Tax Act as to the exemption from the tax of clergymen of all denominations and militiamen of six months' standing.

Land: Crown Lands.—The Land Act Amendment Act, 1897 (c. 19), amends the Land Act as to leases for general purposes, and extends the crown lien on timber royalty. By the Crown Lands Trespassers Act, 1897 (c. 21), the Chief Commissioner of Lands and Works may make summary application to remove trespassers on Crown lands.

Agriculture: Farmers' Institutes.—The Farmers' Institutes and Co-operative Act (c. 13) empowers the Minister of Agriculture to authorise the organisation of farmers' institutes in any electoral or other division of the province, for the encouragement and improvement of agriculture. The officers are to consist of a President, Vice-President, a Secretary-Treasurer (whose duties include the preparation of an annual report), and a number of Directors. The Legislative Assembly may each year set apart a certain sum of money for aiding these institutes, should the number of members not be less than fifteen, each paying an annual fee of not less than 50 cents.; but part of the grant may be applied by the Minister for the promotion of a Farmers' Central Institute for the whole province. The Act also enables the Minister to authorise co-operative undertakings, such as a Farmers' Exchange, Cheese Factory, Creamery, etc., which are to possess all the powers of an incorporated company.

Horticulture.—Horticultural Board Amendment Act, 1897 (c. 15), amends the Act of 1894 as to the creation of a Board of Horticulture.

Game Protection.—The Game Protection Amendment Act, 1897 (c. 14), amends the Act of 1895 as to close seasons, exemption of Indians, etc.

Local Option.—By the Rural Liquor License Act, 1897 (c. 23), no license may be granted for the sale of liquors by retail in any rural settlement unless it is petitioned for by at least two-thirds of the resident householders (other than Japanese, Chinese, or Indians).

Lumber.—The Lumber Inspection Act, 1897 (c. 25), provides for ascertaining the grades of lumber and other wood products, and determines the qualification of persons to act as surveyors of lumber.

2. NEW BRUNSWICK.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—74.

Highways.—C. 4 amends the Highway Act of 1896, and *inter alia* provides that where it is necessary to construct a drain for the purpose of relieving the water flowing from public roads on to private property, and the owner of the property objects to the construction of the drains, a jury of disinterested freeholders shall be summoned, and shall assess the amount of the damage that the owner may suffer.

Queen's Counsel.—C. 5 enacts that not more than two Queen's Counsel shall be appointed in any one year except in the case of the Attorney-General or the Solicitor-General of Canada, or the Attorney-General or the Solicitor-General of this province. It is also provided that no person shall be appointed a Queen's Counsel who is not of fifteen years' standing at the bar of this province.

Constabulary.—C. 6 empowers the Lieutenant-Governor in Council to appoint persons as provincial constables who are to have *ex-officio* all the powers of a constable in every county of New Brunswick.

Provincial Advertisement.—C. 8. By statute the Surveyor-General is authorised to spend a sum of three thousand dollars per annum for the purpose of advertising the attractions of the province as a resort for tourists and sportsmen by the publication and distribution of pamphlets, etc.

Game.—C. 11 amends the Game Law Act, and forbids the killing of any moose or cariboo in any part of the province which lies to the west of River St. John for a period of two years, and forbids absolutely for a period of five years the killing of moose, cariboo, or deer within the County of Albert. During the open season no person is permitted to take or attempt to take in any one year more than one moose, one cariboo, and two deer. Moose, cariboo, or deer, or parts thereof, may not be transported from place to place unless open to view and labelled and accompanied by the owner. The Act also endeavours by the offer of bounties to exterminate wolves, wild cats, and lynx.

Schools.—C. 13 amends the Consolidated Statutes of schools, and provides that when there are children living so remote from the school-house that they are unable on that account to attend the school, the ratepayers of the district may vote a sum of money to enable the children to be conveyed to the school.

Witnesses.—C. 14 amends the Consolidated Statutes of summary convictions, and enables the justices to issue a summons for the attendance of

[1] The Session 60 Vict. ended March 19th, 1898. Of the Acts passed in this Session thirty-six were public, nineteen local, and nineteen personal.

witnesses, and empowers them to commit any witness who refuses to be sworn or to testify.

Agriculture.—C. 20. An Act for the further encouragement of agriculture by the offer of aid to persons erecting mills for the grinding of wheat by the Hungarian or other rolling process, in places where no such mills are at present established. The Commissioner of Agriculture is also empowered to purchase wheat and other seeds, and to place them on sale at convenient prices, with the object of the farmers obtaining the best seeds at reasonable prices.

Criminal Law Evidence.—C. 22. From the date of the passing of this Act witnesses in criminal cases are not excused from answering on the ground that their answer may tend to criminate them or render them liable to civil proceedings. Husband and wife are made competent witnesses except as to communications made during the current year.

Law Courts' Reporting.—C. 27 amends the law for providing shorthand reporters in the courts, and *inter alia* enacts that when two stenographers report together at any court they must, at the opening of the court on the following morning, furnish the presiding judge with a type-written transcript of the previous day's evidence and proceedings.

Bills of Sale.—C. 32 amends the Bills of Sale Act, 1892. Mortgages to secure future advance and endorsements of the bills and promissory notes are void unless executed and filed in accordance with the provisions of this Act.

3. NOVA SCOTIA.

[*Contributed by* L. S. Bristowe, Esq.]

Acts passed—Public general, 43; Local, 37; Private, 82.

Probate Court.—C. 2 amends and consolidates the Acts relating to the Probate Court and the procedure therein. The Act comes into force in any probate district (meaning a district in which a probate court was exercising jurisdiction at the date of the passing of the Act) on the abolition of the office of judge of probate for such district, which it is provided shall take place on the first vacancy. C. 100 of the Revised Statutes thereupon becomes repealed, and the probate jurisdiction vests in the judge of the county court for the county court district in which such probate district lies. The Act defines the jurisdiction and powers of the registrar and other officials, and makes provision for grants of probate and administration. It also provides for an inventory and appraisement of the deceased's estate, for the issuing of advertisements for creditors, for the sale of real estate for payment of debts, and for the administration of the estate generally and its distribution among the persons entitled.

Provincial Exhibition Commission.—By c. 3 certain lands are vested in the Provincial Exhibition Commission for the purpose of an annual provincial exhibition, provision being made for ascertaining the amount of compensation by arbitration.

Mines and Minerals.—By c. 4, s. 1 (amended by c. 5 below), certain leases of mines of gold and silver and other mines applied for within two months from April 17th, 1889, and issued under s. 8 of c. 23 of the Acts of 1889, are legalised. S. 3 enlarges the power of the Commissioner of Public Works and Mines with reference to surrenders and granting new leases; and s. 4 provides that no lease shall be called in question in any court, except within one year after it was granted, unless obtained by fraud or misrepresentation. The Act also amends certain sections of c. 2 of the Acts of 1893, and s. 143 of c. 1 of the Acts of 1892.

C. 5 amends the last Act.

Cold Storage.—C. 7 enables the Governor in Council to aid the construction of places for the cold storage of agricultural and other products, either by guaranteeing interest or dividends, or by an annual subvention.

Actions against Judges, etc.—C. 9 prohibits any action from being brought against any judge, stipendiary, or police magistrate, justice, or officer, for anything done under the supposed authority of a statute of the province or the Dominion of Canada which was beyond its legislative jurisdiction, unless such action could have been brought if the statute had been within such jurisdiction. It also deals with the measure of damages.

Intoxicating Liquors.—C. 10 amends the "Act respecting the sale of intoxicating liquors and the Acts in amendment thereof."

C. 11 amends the "Liquor License Act of 1895."

Anatomy. C. 14 appoints an Inspector of Anatomy, and provides for the delivery to him of unclaimed bodies by coroners and other officers for use by legally established medical schools and colleges for the advancement of pathological or anatomical science. Provision is made for the ultimate interment of such bodies, and for the use of them for the above purposes only.

C. 15 slightly amends the last Act.

Public Instruction.—CC. 16, 17, and 18 amend c. 1 of the Acts of 1895, entitled, "An Act to amend and Consolidate the Acts relating to Public Instruction."

County Corporations.—CC. 19, 20, and 21 amend c. 3 of the Acts of 1895, entitled, "An Act to amend and consolidate c. 56 Revised Statutes of County Incorporations and Acts in amendment thereof."

Judicature.—C. 31 amends the Nova Scotia Judicature Act by providing that in certain cases any sitting or term or part of a sitting, or term of the Supreme Court may be presided over by a judge of a county court.

C. 32 further amends the same Act by enlarging the powers of the county court judges as masters of the Supreme Court.

C. 33 amends c. 17 of the Acts of 1896, which amended the Nova Scotia Judicature Act.

C. 34 amends c. 12 of the Acts of 1890, which also amended the Nova Scotia Judicature Act.

County Courts.—C. 35 amends c. 9 of the Acts of 1889, entitled, "An Act to amend and consolidate the Acts relating to County Courts."

Towns' Incorporation.—C. 36 amends the Towns' Incorporation Act, 1895, as regards the proceedings to be taken for non-payment of poll tax, and as to advertising for sale goods taken by distress and in other particulars.

Married Women's Property.—C. 37 amends c. 94 of the Revised Statutes "Of the Property of Married Women." It provides that a married woman may render herself liable in respect of her separate property as if she were a *feme-sole*, and also that every contract entered into by a married woman otherwise than as agreed shall bind her present and future separate property, whether she is then possessed of separate property or not.

Collection.—C. 38 amends the Collection Act, 1894, in various particulars relating to matters of practice.

Boarding-Houses for Infants.—By c. 40 provision is made for the grant of licenses to board children under twelve years of age; and no person other than a superintendent of the poor or of almshouses or an institution incorporated for the purpose is to be permitted to board any such child not being a relative, apprentice, pupil, or ward without legal commitment or without being licensed under the Act. The license is granted by the mayor of the city or town. A register is to be kept by every licensed person, and provision is made for the inspection of the licensed premises and the inmates.

Jury Panels.—C. 42 legalises Jury Panels Assessment Rolls and Revisers' List for 1897.

Civil Expenses.—C. 43 makes provision for defraying divers expenses connected with the civil government of the province.

Minor Amending Acts.—In addition to the above, there are a number of Acts making small amendments in various existing statutes. C. 3 of the Revised Statutes "Of the Composition, Powers, and Privileges of the Houses" is amended by c. 1, the Succession Duties Act, 1895, by c. 6, c. 2 of the Acts of 1896, entitled, "An Act to encourage the Establishment of Local Hospitals" by c. 8, c. 44 of the Acts of 1886, entitled, "An Act respecting Gaols, Municipal Lunatic Asylums, and Poorhouses" by c. 12, and the Nova Scotia Game Act, 1896, by c. 13. C. 29 amends c. 30 of the Acts of 1887, entitled, "An Act to amend c. 138 Revised Statutes of Costs and Fees." C. 30 amends c. 31 of the Acts of 1895, entitled, "An Act to provide for the Payment of Prothonotaries and Clerks of the County Court"; and c. 39 amends c. 8 of the Acts of 1896, entitled, "An Act to prevent the Spread of Diseases affecting Fruit Trees."

Here are also the following amendments of the Revised Statutes, 5th Series :—

C. 47 "Of Highway Labour" is amended by c. 22
C. 106 "Of Juries" is amended by cc. 23 and 24
C. 52 "Of Ferries" is amended by c. 25
C. 79 "Of Joint Stock Companies" is amended by cc. 26 and 27
C. 50 "Of Commissioners of Streets" is amended by c. 28.

4. MANITOBA.[1]

[*Contributed by* H. Stuart Moore.]

Acts passed—38.

Immigration.—C. 1 deals with the immigration into Manitoba of certain classes of children. The Lieutenant-Governor may authorise any society or agent to carry on the work of bringing into the province indigent, neglected, or dependent children for the purpose of placing them in foster homes or binding them as apprentices. The society or agents shall carefully supervise every child brought into the province by them until the age of sixteen, and shall cause them to be visited at least once in every year, and shall have all the powers and perform all the duties of guardians. The society shall provide a permanent home or shelter, to which the child may return in case the person with whom the child has been placed is unable or unwilling to retain the custody or control of the child. A penalty is imposed for the importation of an indigent child into the country otherwise than in accordance with the provisions of the Acts; also for importing any child who from defective intellect, disease, or physical infirmity, which renders him unable to follow any trade or calling, or any child of known vicious tendencies or who is known to be an habitual criminal or who has been reared or resided among habitual criminals or whose parents are habitual criminals, idiots, lunatics, or weak-minded or diseased or confirmed paupers.

Foreign Companies.—C. 2 enables any company or corporation duly incorporated under the laws of Great Britain or any other foreign state or country authorised to carry out any of the purposes to which the legislative authority of the Legislature of Manitoba extends, on obtaining a license, to carry on business within the province in compliance with the provisions of this Act; but this does not apply to corporations formed in connection with religious purposes: unlicensed foreign corporations cannot hold real estate within the province.

Joint Stock Companies.—C. 3 amends Manitoba Joint Stock Companies Act with regard to the creation of preferential stock.

[1] The Session 60 Vict. ended March 30th, 1897. The first thirty-five chapters are public Acts, the remainder are private Acts.

Statute of Limitations.—C. 12 enacts that the Statute of Limitations shall not apply to actions upon seed grain notes held by municipalities.

Intoxicating Liquors.—C. 13 amends the Liquor License Act, and enacts that in cities, towns, and incorporated villages there shall only be two licenses for the first five hundred, one for the next five hundred, and one for each additional six hundred of the population. In rural municipalities and in places where there is no municipal organisations, only one license is allowed for first three hundred and one for each additional six hundred of the population. Houses shall not be kept open after ten o'clock, except on Sundays, and shall be kept closed during the whole of election or bylaw voting days.

Mines.—C. 17. The Mines Act, 1895, provides regulations for the management of mines. According to this Act any one may explore for mines on any Crown lands not at the time staked out or occupied. Crown lands can be sold as mining lands; and the grantees must during the first five years spend four dollars per acre in opening up the mines where the land exceeds one hundred and sixty acres, and five dollars per acre when less, and in default the lands will be reverted to the Crown. No person shall prospect on any private grounds unless he has the consent of the owner. The Act provides for the appointment of inspectors, who have power to settle disputes between licensees, and their decision is in all cases final. Miners shall pay five dollars per annum for a license, and are enabled to mine on any lands on which a mining claim is not marked or staked out. The licensees shall have the right to mark out a claim on any Crown lands not for the time being included in a mining claim by planting a mark at each of the four corners. A mining claim for one person shall not be more than about ten acres; but companies of two or more persons may claim as much as twenty acres. If the claim is not worked for the space of three months after it has been marked out, it becomes forfeited. The discoverer of a new lode of ore shall be entitled to two claims. The inspectors under the Act have power to examine and enquire into the state and condition of any mines. General rules are appointed for ventilation, fencing, and security of shafts, the use of gunpowder and other explosives.

Joint Stock Companies.—C. 18 enables companies incorporated under the Manitoba Joint Stock Company Act to dispose of stock, and enacts that the original capital stock shall not be more than two million dollars.

Dairies.—C. 20 amends the Municipal Act. Amongst other things it provides for inspection of stables and cow-houses.

Taxes.—C. 21. The Municipal Assessment Act is amended by this enactment, and the necessary procedure for obtaining a title to land sold for taxes is defined.

Municipal Insurance.—C. 23. The Municipal Hail Insurance Act is amended by this Act. The council of any rural municipality may provide a fund out of which to indemnify any ratepayer whose crop of wheat or

other grain is damaged or destroyed by hail. The rate is levied on the average of the land, and shall never exceed two cents. per acre.

C. 24. The Partnership Act, 1897, is similar in terms to the Partnership Act passed by the Imperial Parliament in 1890 (53 & 54 Vict., c. 39).

Religious Instruction.—C. 26 amends the Public Schools Act, and defines the manner and time of religious teaching within public schools.

5. PRINCE EDWARD ISLAND.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—21.

Land Tax.—C. 3 amends the Assessment Act, 1894, and fixes the land tax at one-fifth of one per cent. on the value of the land. The owner or occupier of the land is required to make a declaration under the provisions of the Canada Evidence Act, 1893, setting out the value of the property to be taxed. In the event of the owner or occupier neglecting to do this, the Provincial Treasurer places a value on the land, and his valuation is final. Under the Assessment Act of 1894 the land tax varied in amount in accordance with the value of the land.

Income Tax.—C. 4. By this enactment the Income Tax Act, 1894, is amended, and incomes derived from wages or salaries or actual manual labour are exempted when they do not amount to a sum exceeding three hundred and fifty dollars.

Sureties.—C. 5 enables a surety company, which shall have complied with the requirements of every law of this province, and whose invested capital is two hundred and fifty thousand dollars, and which has complied with all the conditions of this Act, to guarantee any bonds, undertakings, recognisances, or other obligations.

Board of Agriculture.—CC. 1 and 7 establishes a Board of Agriculture for the province, and empowers the Government to grant a sum not exceeding eight hundred dollars per annum for the purpose of inducing the erection of suitable coal storage houses at Charlottetown for the encouragement of agriculture.

6. NEWFOUNDLAND.

[*Contributed by* L. S. Bristowe, Esq.]

Acts passed—26.

Supply.—C. 1 contains a money grant for defraying civil expenses of the colony.

Revenue.—C. 2 continues (59 Vict., c. 14) granting duties on imported goods.

[1] The Session 60 Vict. ended on May 1st, 1897. Of the Acts passed in this Session eight would probably be treated in the United Kingdom as public and general.

Public Works.—C. 3 is an appropriation Act for constructing and repairing roads, streets, and bridges, and other public works.

Railways.—By C. 4 the Governor in Council is empowered to enter into contracts for the construction of certain lines of railway, provision being made for the payment of expenses by debenture bonds of the colony and for the compensation of persons whose lands are taken.

French Treaties.—C. 5 continues the Newfoundland French Treaties Act until December 31st, 1898.

Education.—C. 7 appropriates six hundred dollars annually to scholarships in commemoration of Her Majesty's Diamond Jubilee. The scholarships are divided into Jubilee University Scholarships and Jubilee Collegiate Scholarships.

Local Affairs.—C. 8 repeals ss. 1 to 17 of c. 45 of the Consolidated Statutes (2nd Series), entitled, "Of the Administration of Local Affairs in Outpost Districts," and substitutes new provisions for bringing any locality within the operation of that Act by proclamation founded on a petition by the electors of the locality.

Inflammable Oils.—C. 9 amends c. 39 of the Consolidated Statutes (2nd Series), entitled, "Of Inflammable Oils," and enacts new provisions with regard to the storage thereof.

Warehouse Receipts.—C. 10 amends 58 Vict., c. 11, entitled, "An Act respecting warehouse receipts and other securities in the possession of banks."

Dogs.—C. 12 provides that dogs found at large not clogged or muzzled may be destroyed by the police, with the exception of certain dogs protected by a magistrate's license.

Post Office.—C. 14 amends the Post Office Act, 1891. It imposes penalties for stealing letters or parcels, forging stamps or money orders, and other offences in connection with the postal service.

Lunatics.—C. 15 regulates the confinement of insane persons in the asylum for the insane at St. John's. The superintendence and management of the asylum is vested in the Board of Works, and the appointment and duties of a medical superintendent are provided for. Any person alleged to be insane may be apprehended on a warrant from a justice of the peace, who, if after hearing evidence (which must include a medical certificate) he is satisfied of the person's insanity, may commit him to the asylum, where he is to be detained until regularly discharged.

Insane convicts may also be removed to the asylum or other place of safe custody on the order of the Attorney-General, which may be founded on an enquiry before and certificate of a justice of the peace. Provision is made for the re-committal of an escaped lunatic and for the maintenance of lunatics. Lunatics may be discharged by the medical superintendent or the Attorney-General. Provisions are also enacted for the holding of inquisitions of lunacy, and for the custody of the person of the lunatic and

the management of his property by a committee, various powers in relation to such property being conferred upon the Supreme Court.

Beavers.—C. 17 provides a close season for beavers.

Evidence.—C. 21 amends the law of evidence as to the proof of entries in bankers' books, the proof that a book is a banker's book, the verification of copies of entries in such books, and orders for inspection.

Judicature.—C. 22 amends the Judicature Act, 1889, by enabling the Governor in Council to appoint an acting judge of the Supreme Court for the trial of proceedings which from any cause whatever the judges are precluded from trying.

Summary Jurisdiction.—C. 23 provides that except in certain cases the imposition of a fine on summary conviction shall imply a corresponding term of imprisonment according to a specified scale. It also imposes certain penalties for particular offences.

Supply.—C. 24 provides for the indemnifying the Governor for sums advanced out of the Colonial Treasury for the service of the colony.

C. 25 contains a money grant for civil expenses.

C. 28 provides for various contingent expenses.

CC. 18, 19, and 20 respectively incorporate ten Roman Catholic bishops of St. John's and Harbor Grace, and the Vicar Apostolic of St. George's.

There are also various small amendments of existing Statutes.

C. 6 amends c. 2 of the Consolidated Statutes (2nd Series), entitled, "Of the Representation in the House of Assembly and the Powers and Privileges thereof."

C. 11 amends the Acts relating to the Harbor Grace Water Company; c. 13 the Deer Preservation Act, 1896, and c. 16 amends c. 119 of the Consolidated Statutes (2nd Series), entitled, "Of Pilots and Pilotage for the Fort of St. John."

Regulations respecting the Lobster Industry, the Herring and Cod Fisheries, and Trout and Salmon, made by the Fisheries' Board under s. 8 of 56 Vict., c. 8, entitled, "An Act respecting the Department of Fisheries," are appended to the statute book.

Two Acts are also added, from which the assent of the Governor was withheld.

7. DOMINION OF CANADA.

[*Contributed by* T. Raleigh, Esq.]

Iron: Government Bounty.—By c. 6 bounties are to be paid on iron and steel made in Canada.

Savings Bank.—C. 9. This is an Act for amendment of the law as to certain savings banks.

Bills of Exchange—Forged Indorsements.—By c. 10 the Bills of Exchange Act is further amended. When a person seeks to recover money paid on a

bill bearing a forged or unauthorised indorsement, notice of such forgery, etc., must be given within a reasonable time.

Rate of Interest.—C. 8 provides that where interest is payable for a period less than a year, not more than 6 per cent. may be recovered, unless the contract expressly states what the rate per annum is.

Constitution, etc.—C. 11. By this Act penalties are imposed on persons who promote or assist the importation or immigration of any alien into Canada. But the Act only applies to countries where similar legislation is in force against Canadians: in other words, it is a countercheck to the recent legislation of the United States.

Customs.—C. 16. This consolidates and amends the Acts respecting the duties of customs.

Petroleum.—C. 20. This Act amends the Petroleum Inspection Act.

Cheese Factories.—C. 21. This Act provides for the registration of cheese factories and creameries, and the branding of dairy products.

Steamboats.—C. 22 amends the Steamboat Inspection Act.

Navigable Waters.—C. 23 amends the Act respecting the protection of navigable waters.

Fisheries.—C. 24 amends the Fisheries Act.

Patents.—C. 25 amends the Patent Act.

Post-Office.—C. 26 amends the Post-office Act.

Company: Borrowing Powers.—C. 27 amends the Companies Act by excepting from the restrictions on a company's borrowing powers, bills of exchange and promissory notes.

Title to Land.—C. 30 amends the Land Titles Act, 1894.

Building Societies.—C. 31 amends the law of building societies and loan of savings companies.

Trials by Jury.—C. 32 resolves doubts as to trials by jury in the North-West Territories.

Appeals.—C. 34. This regulates the conditions of appeal to the Supreme Court from the Court of Appeal for Ontario.

8. PROVINCE OF ONTARIO.

[*Contributed by* T. Raleigh, Esq.]

Consolidation of Statutes.—C. 3. By this Act provision is made for bringing into force the Revised Statutes of 1897: the Interpretation Act is amended by c. 2.

Constitution, etc.—CC. 7, 19. Powers are given by this Act to deal with persons in unlawful possession of Crown lands. A fourth judge is added to the Court of Appeal; and by c. 19 the administration of justice in unorganised territories is regulated.

Mining.—C. 8. This Act amends the Mining Laws, and *inter alia* provides for a free grant of forty acres to the first discoverer of ores and minerals.

Fisheries.—C. 9. This Act regulates the fisheries of Ontario.

Agriculture.—CC. 10, 11. These Acts deal with the improvement of Agriculture.

Registration of Births, Deaths, and Marriages.—C. 12. This Act provides for registration and inspection of vital statistics, births, deaths, and marriages.

Amendment of Statute Law.—C. 14. This Act amends the Statute Law in certain particulars: registry offices, coroners, criminal justice, landlord and tenant, lands devolving on executors, married women, voters' lists, registration of voters, constables and criers, special examiners, county court judges, public libraries, solemnization of marriages, education, railways, inspection of milk, notaries public.

References and Arbitrations.—C. 16. This Act amends and consolidates the enactments respecting references and arbitrations.

Evidence.—C. 17. This makes copies of statutes, proclamations, orders in council, printed by Queen's Printer, evidence.

Church Pews.—C. 18. This Act makes interest in church pews liable to execution.

Will: Husband and Wife.—C. 20. This enacts that a will is not revoked by marriage

(1) If the will declares that the marriage is in contemplation;
(2) If the surviving husband or wife elects to take under the will;
(3) If the will merely exercises a power of appointment over property which would not come to the personal representation.

Title to Land.—C. 21. This provides for registration of instruments in respect of unpatented lands.

Married Women.—C. 22. This amends the law as to contracts entered into by married women.

Wages.—C. 23. This Act gives priority to wages in the administration of a deceased person's estate.

Mechanics' and Wage-Earners' Lien.—C. 24. This amends the Act relating to the above.

Trade Disputes.—C. 25. This amends the Act of 1894 as to these.

Queen's Counsel.—C. 26. By this Act not more than five Queen's Counsel are to be appointed in one year.

Surveyors of Lands.—C. 27. This is an Act regulating the qualifications and education of the above.

Joint Stock Companies.—C. 28. This Act deals with the incorporation and regulation of joint stock companies.

Mining Companies.—C. 29. This Act deals with the incorporation and regulation of mining companies.

Road Companies.—CC. 30, 31, 32. These amend the Act relating to the above.

Piers, Wharves, and Dock Companies.—C. 33. This Act amends the Act respecting the above.

Gas and Water Companies.—C. 35. This Act amends the Act regulating the above.

Insurance.—C. 36. This is an Act of 198 sections, consolidating the law relating to insurance.

Building Societies and Loan Corporations.—C. 38. This Act consolidates and amends the law relating to the above.

Cemetery Companies.—CC. 42, 43. These amend the law relating to the above.

Companies: Change of Name.—C. 44. This sanctions companies changing their names on certain conditions.

Municipalities.—C. 45. This amends the law relating to the above.

Liquor Licenses.—C. 50. This is an Act to improve the law as to the above.

Shops.—C. 51. This provides for the inspection of shops, and regulates employment in them.

Maternity Boarding Houses.—C. 52. This provides for the registration of the above.

Immigration of Children.—C. 53. This regulates the operations of societies bringing children into Ontario.

Game.—C. 54. This amends the Ontario Game Protection Act, 1893.

Bicycles and Tricycles.—C. 56. This Act declares the rule of the road for the above. C. 57. This Act empowers town and village councils to set apart bicycle paths.

Technical Schools.—C. 58. This Act makes provision for the establishment of the above.

9. PROVINCE OF QUEBEC.

[*Contributed by* T. Raleigh, Esq.]

Elementary Education: Grant of Land.—C. 3. By this Act the Lieutenant-Governor is empowered to set aside 1,500,000 acres of land for purposes of elementary education.

Game Laws.—C. 25. This amends the above.

Protection of Settlers.—C. 27. This Act provides for the above and the creation of homesteads.

Technical Education.—C. 28. This Act provides for the above.

Churches, Parsonages, and Cemeteries.—C. 39. This Act makes provision for the construction and repair of the above.

Dentists.—C. 41. This amends the law relating to the above.

Municipal and Civic Corruption.—C. 42. This Act harmonises the laws relating to the above.

Gas and Water Companies.—C. 43. This limits the borrowing powers of the above to forty thousand dollars.

Code of Civil Procedure.—C. 48. This Act brings into force the revised code of civil procedure.

Acts have been passed amending the law relating to elections and to the organisation of the public departments.

Amendment of Revised Statutes.—C. 49. This amends the above, *inter alia*, by making married women separate as to property engaged in commerce.

Civil Code.—CC. 50, 56. These amend the civil code in various particulars, chiefly the replacing registers of civil status, which have been lost or destroyed, and the probate of wills.

Stenographers.—C. 51. This provides for the appointment of stenographers for the Superior Court.

Community.—C. 52. This abolishes continuation of community.

Justices and Vexatious Actions.—C. 53. This protects justices of the peace by forbidding actions for acts done ander statutory provisions.

Indecent posters.—C. 58. This prohibits the above under a penalty not exceeding fifty dollars.

Evidence.—A party to an action may be examined by the other party, and his evidence may be used as a "commencement of proof."

10. NORTH-WEST TERRITORIES.

The Ordinances for 1897 for these Territories have not up to the present reached the United Kingdom.

IX. WEST INDIES.

1. THE BAHAMAS.[1]

[*Contributed by* Wallwyn P. B. Shepheard, Esq.]

Acts passed—38.

Coroners.—The Coroners' Further Enquiries Act, 1897 (60 Vict., c. 2), authorises the holding of further enquiries by coroners after the return of an inquisition, if in the opinion of the Attorney-General further enquiry be desirable.

Street Traffic.—The Street Traffic Act, 1897 (60. Vict., c. 5), inflicts penalties on cyclists who ride in such a way as to be dangerous to the public, or neglect to stop when called upon to do so by the police, or refuse

[1] The Session 60 Vict. ended July 14th 1897.

names and addresses to police. The Governor in Council is empowered to make regulations controlling the traffic over the highways and the use of cycles.

Savings Banks.—The Post-Office Savings Bank Act Amendment Act, 1897, enables the Governor in Council to make regulations limiting the deposits by any one person to £200, of which not more than £40 shall be annually deposited.

Guardianship of Infants.—The Guardianship of Infants Act, 1897 (60 Vict., c. 17), on the death of the father of an infant, appoints the mother, if surviving, the guardian, either alone if no guardian has been appointed by the father, or jointly with any guardian appointed by the father; and if there be no such guardian, the court may appoint one to act jointly with the mother.

The mother of an infant is empowered to appoint by deed or will a guardian to act after the death of herself and the father; and where guardians are appointed by both parents, they shall act jointly. The mother may nominate a guardian to act after her death jointly with the father; and the court, if the father is unfitted to be sole guardian, may confirm the appointment by the infant's mother.

Powers over the infants and the guardians are given to the court by the Act, who may remove guardians and protect the infants in cases of the divorce of their parents and in cases of desertion.

Criminal Assaults.—The Criminal Law Amendment Act, 1897 (60 Vict., c. 18), makes consent of young persons under the age of thirteen no defence to a charge of indecent assault upon them.

Public Health.—The Quarantine Act Amendment Act, 1897 (60 Vict., c. 26), confers additional powers on the Governor in Council to make rules respecting the disinfection of all vessels in quarantine and their cargoes, and for guarding against the introduction of disease into the colony.

Interpretation of Acts.—The Interpretation Act, 1897 (60 Vict., c. 29), declares that reference to the Sovereign or to the Crown in any Act shall have reference to the Sovereign for the time being. The use of words importing the masculine gender shall include females, and words in the singular number shall include the plural, and in the plural the singular number. The word "writing" in any Act shall include type-writing, printing, etc. "Colony" shall mean the islands and territorial waters of the Bahamas. "Financial Year" shall mean the twelve months ending March 31st in any year. "Governor" shall mean the officer for the time being administering the government of the colony. "Governor in Council" shall mean the Governor by and with the advice of the Executive Council of the colony. "Land" shall include houses, buildings, messuages, tenements, and hereditaments of any tenure. "Month" shall be calendar month. "Oath and Affidavit" shall include affirmation and declaration. "Person" shall include any body of persons corporate or uncorporate and the Sovereign.

"Secretary of State" shall mean Her Majesty's principal Secretary of State for the Colonies.

Acts may be cited by the short title (if any) of the Act.

Where Acts repeal and re-enact any provision of a former Act, references in any other Act to the provisions so repealed shall be deemed to refer to the provisions so re-enacted.

Where Acts repeal any other enactment the repeal shall not revive anything not in force or existing at the time of the repeal, nor affect the previous operation of the repealed enactment, nor any right, privilege, obligation, or liability under any repealed enactment, nor any penalty incurred for an offence under the repealed enactment, nor any legal proceedings in respect of such rights, etc., under the repealed enactment.

Acts may be amended or repealed in the session in which they were passed.

The interpretation of terms under the Act shall not override the intended meaning of any Act.

2. BARBADOS.[1]

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed—22.

"Infectious Disease."—Act 1. The Quarantine (Amendment) Act, 1897, amends the Quarantine Act of 1896 by enlarging the term "infectious disease" so as to include plague.

Court Fees: Accountability of Magistrate's Clerks.—Act 2. The Police Magistrates (Amendment) Act, 1897, amends the Police Magistrates Act of 1891 by making the clerks of the magistrates the accounting parties for all court fees to the Colonial Treasurer, to whom such fees are to be paid over.

Schools as Hospitals.—Act 4. The Public Health (Amendment) Act, 1897, amends the Public Health Act, 1891, by giving power to the General Board of Health whenever the spread of disease shall render temporary hospitals necessary to close and use for such purpose the public elementary school buildings.

"Vehicle": Cycle.—Act 5. The Highways (Amendment) Act, 1897, amends the Highways Act, 1891, by adding the words "bicycle, tricycle, or other cycle" to the definition of the word "vehicle," so as to render cycles subject to the annual license duty at the rate of one shilling for each wheel.

Candidate for House of Assembly: Consent.—Act 6. The Representation of the People (Amendment) Act, 1897, amends the principal Act, 1891, by providing that the proposer of any candidate for election to the House

[1] The Session 60 Vict. ended on December 31st, 1897.

of Assembly shall, if the candidate be not present, declare on oath, if so required by any elector or the sheriff, that the proposing of the name of such candidate has been done with his knowledge and consent.

Emigration of Poor Women.—Act 7. The Victoria Emigration Society Act, 1897, is an Act passed in order to provide for the commemoration of the completion of the Sixtieth year of the reign of Her Most Gracious Majesty Queen Victoria by the institution of a society for assisting the emigration of poor women who cannot earn their living in the colony.

Landlord and Tenant: Unexhausted Improvements.—Act 11. The Landlord and Tenant (Amendment) Act, 1897, amends the principal Act of 1891 by providing that in every case in which the tenancy of land, held otherwise than under a lease, agreement in writing, or as incident to service, is determined by the landlord, the tenant shall be entitled to receive from the landlord the value of the growing crops and compensation for unexhausted improvements made by the tenant. [Under the principal Act compensation for growing crops and unexhausted improvements was payable by the landlord to the tenant or occupier only in the case of tenancies incident to service on the estate.] This Act also adds to the chattels distrainable under the principal Act the crops growing on the land at the time of the distress.

Agricultural Loans: Transferability of Certificates.—Act 12. The Agricultural Aids (Amendment) Act, 1897, amends the principal Act of 1887 by making the loan certificates for advances under the Acts transferable as collateral security as well as absolutely.

Police Magistrates.—Act 13. The Police Magistrates Act, 1897, is a consolidation of all the Acts relating to police magistrates. The Act divides the island into certain police districts, vests in the Governor the appointment of magistrates and their clerks, enumerates the cases coming within the summary jurisdiction of the magistrates. The right of the public to have access to the court in which cases on summary proceedings are heard is absolute, but in cases for indictable offences is at the magistrate's discretion. Power to commit and fine for contempt of court is given to each magistrate. Informations or complaints are to be laid before the magistrates, who shall proceed either to issue a summons to the person charged to appear or a warrant for the arrest of the person charged. The attendance of witnesses may be enforced by summons or warrant.

Proceedings in Indictable Offences.—In cases of indictable offences the magistrates are to take the depositions of the witnesses on oath and in writing, and hear the witnesses for the person charged before committing him for trial or admitting him to bail. The documents in the proceedings are within three days after the committal of any person for trial to be transmitted to the Attorney-General.

Proceedings in the Summary Jurisdiction.—In all cases of summary jurisdiction, both parties being present, the magistrate shall take the evidence

in court and dismiss the case or make such order as the Act under which the complaint is made shall authorise. The magistrate's order, with the particulars of the case, shall be entered in a book in the manner provided by the Act. The magistrates may fix the time and manner of payment of penalties, and enforce payment by execution under his hand with power to order imprisonment in default of payment. Criminal offences are punishable by imprisonment, with or without hard labour; and boys under sixteen years of age may be whipped.

The powers and functions assigned to the police magistrates are not to be exercised by justices of the peace, save the issue of warrants of arrest or search warrants which are made returnable before a police magistrate.

Vagrancy.—Act 14. The Vagrancy Act, 1897, is for the suppression and punishment of vagrancy, and declares that the following persons shall be deemed idle and disorderly, and liable on conviction before a police magistrate to a penalty or imprisonment:—

(1) Persons applying for relief and not disclosing their ownership of money or property.
(2) Persons able either by labour or other means to maintain themselves, and wilfully neglecting to do so.
(3) Prostitutes behaving riotously or soliciting in public streets.
(4) Beggars.

"**Rogues and Vagabonds.**"—The following are deemed rogues and vagabonds, and liable on conviction to fine or imprisonment:—

(1) Persons committing foregoing offences after conviction as idle and disorderly.
(2) Fortune-tellers, exhibitors of indecent prints, etc.
(3) Persons guilty of indecent exposure in public places, or exhibiting wounds or deformities for alms, or soliciting charitable contributions under false pretences, or betting or wagering in public places.
(4) Persons in possession of housebreaking implements or fire-arms with felonious intent.
(5) Persons apprehended as idle and disorderly, and violently resisting the constable.

"**Incorrigible Rogues.**"—The following are deemed incorrigible rogues, and liable on conviction to imprisonment with hard labour for any time not exceeding six months:—

(1) Persons escaping from prison.
(2) Persons committing offences as a rogue and vagabond after having been previously convicted as such.
(3) Rogues and vagabonds violently resisting the constable arresting him.

Power is given to police officers to arrest any person for offences against the Act.

False Oaths.—Act 15. The False Oaths (Punishment) Act, 1897,

punishes with a penalty not exceeding £50 persons who, being under statutory obligation to make an oath, wilfully and falsely make such oath, unless the Statute under which such oath is made provides a penalty for false swearing or such person is liable to prosecution for perjury.

Life Insurance: Payment into Court.—Act 17. The Life Assurance Companies (Payment into Court) Act, 1897, enables any life assurance company in the island to pay into the Barbados Court of Chancery when the amount exceeds £500, or into the Assistant Court of Appeal when the amount is under £500, any moneys payable under a life policy in respect of which in the opinion of the Board no sufficient discharge can otherwise be obtained. The certificate of the Master in Chancery or the Clerk of the Assistant Court of Appeal shall be a sufficient discharge to the company for the moneys paid in.

Education Vote.—Act 18. The Education (Amendment) Act, 1897, amends the principal Act, 1890, by providing that in case of delay in voting the annual estimates for the purposes of the Act the existing Educational Establishment shall continue to be maintained by the public treasury, but for no longer period than twelve months. The annual expenditure under the Act to meet the cost of

(1) Salaries to teachers,
(2) Allowance for the instruction of pupil teachers,
(3) Books, stationery, etc.,
(4) Examinations of teachers and pupil teachers,

is not to exceed £11,000.

Poor Law.—Act 20. The Settlement of the Poor and Bastardy Act, 1897, empowers the authorities of every parish to apprehend vagrants and beggars, and bring them before the police magistrate of the parish for the ascertainment of their settlement and their removal to and disposal in the parish to which they shall be adjudged to belong. In adjudging the settlement the magistrates shall be guided by the following rules :—

(1) The place of birth subject to the settlement of the mother following the settlement of her husband in the event of birth in parish not the settlement of the mother.
(2) The parish in which pauper had resided continuously for three years previously.
(3) The parish where pauper shall have been owner of land, or being a rentee, shall have resided continuously for three years previously.

The maintenance of paupers to devolve on parents, grandparents, and children, if of sufficient ability to maintain their pauper relative. Husbands to maintain children of wife by former marriage or connection, whether legitimate or illegitimate, until such children attain the age of sixteen or the mother dies. Bastards to follow the settlement of their mother until the age of sixteen or acquisition of settlement in their own right ; and until that age to be maintained by mother so long as she is unmarried or a widow.

Mothers unmarried and unable to maintain bastard child to have power to summons putative father, and obtain order against him for payment to her of a weekly sum not exceeding five shillings for maintenance. Mothers of illegitimate children and putative fathers liable to imprisonment with hard labour for desertion of their children, where such children become chargeable on the parish.

3. BERMUDA.[1]

[*Contributed by* REGINALD GRAY, ESQ.]

Acts passed—14.

Boiler Inspection.—No. 1. The Boiler Inspection Act, 1897, provides for the inspection of boilers by a surveyor appointed by the Board of Public Works.

Survey of Bermuda.—No. 4. The Survey of Bermuda Act, 1897, makes a grant of £150 towards the cost of a trigonometrical survey of the islands in addition to the sum of £400 granted for the same purpose by an Act of 1894.

Demise of the Crown.—No. 5. The Demise of the Crown Act, 1897, enacts that the Colonial Parliament in being at any future demise of the Crown shall not thereby be determined or dissolved, as provided by an old Act of 1761.

Aliens.—No. 7. The Alien Act, 1897. This is a very important measure from a local point of view. From time to time difficulties have arisen in consequence of Bermudian women marrying aliens, chiefly American citizens, and thus becoming legally incapable of holding real estate in Bermuda. Those who wished to *hold* the real estate which they owned at the time of marriage were not put to any inconvenience or loss, because the Crown did not in any such case institute escheat proceedings, but the disability rendered it practically impossible for such persons to make a good title in the event of a sale. From 1890 to 1897 several efforts were made to pass a measure to enable such women—"statutory aliens," as they were designated—to sell their lands within a limited number of years; but the Imperial Government made it a condition that any such Act should provide for the repeal of the first section of the Act of 1857, which in consequence of the Imperial Naturalisation Act, 1870, had become inoperative, and consequently misleading if retained on the Colonial Statute Book. The House of Assembly was unwilling to specifically repeal this section, and the relief measure consequently failed to become law; but in 1897 the scope of the Act was enlarged so as to enable aliens of both sexes to dispose of their real estate

[1] The Session of the Legislature, which commenced in May 1897, was prolonged until January 1898, and four Acts which were initiated in 1897 did not become law until 1898 and are consequently not included in the above summary.

within a limited time after the passing of the Act, or after subsequent acquisition of title; and this Act, which provided for the repeal of the objectionable section of the Act of 1857, passed the Legislature and now awaits the sanction of the Crown.

Protection of Justices of the Peace.—No. 11. The Protection of Justices Act, 1897, adopts several of the provisions of the English Statute Law as to actions brought against justices of the peace for acts done in execution of their duty.

Statute Law Consolidation.—No 12. The Statute Law Consolidation Act, 1897, was based on the recommendation of a Joint Committee of the Legislative Council and House of Assembly appointed in 1896 to consider the subject. It provides

(1) For the appointment of a Statute Law Consolidation Committee consisting of one member of the Council and two members of the Assembly.

(2) For the filling of vacancies in the Committee.

(3) For the consolidation into one Act of such of the Acts relating to the same subject as the Committee deem expedient, or as the Legislature shall by resolution require to be consolidated.

(4) That if the Committee consider any amendments desirable before consolidation, they may report the same to the Legislature and submit an amending Bill.

(5) That every consolidating Bill is to be accompanied by an analytical table showing where the provisions of the consolidated Acts are contained in the Bill, which, if any, are omitted, and the reason therefor.

(6) That the language of the consolidated Acts shall as far as practicable be used, subject to such alterations as are necessary to preserve a uniform mode of expression without altering the legal effect.

(7) That no amendment, except a verbal amendment, shall be made in any consolidating Bill.

(8) That the Committee have power to employ counsel.

The Act makes an annual grant of £100 for three years, and provides for the payment of the members of the Committee.

Interpretation of Acts.—No. 13. The Interpretation Act, 1897, provides for the interpretation of certain expressions and words frequently occurring in Acts of the Legislature, and adopts some of the provisions of 52 & 53 Vict., c. 63.

4. BRITISH GUIANA.[1]

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—22.

Average Tax.—No. 3. The Tax Ordinance, 1897, imposes a tax on each acre of land in sugar plantations of fifty acres or more under cane cultivation of one dollar and thirty-five cents., and on each acre of land empoldered, but not under cane cultivation, of two cents.

Tonnage Duties.—Tonnage duties are imposed on sailing vessels of seventy tons and upwards of twenty-five cents. per ton, and under seventy tons of five cents. per ton, to be collected only four times in the year. Tonnage duties are imposed on steam vessels. The vessels of Her Majesty and of foreign governments, Royal Mail Steamers, and pleasure yachts are exempt from tonnage duty.

Spirits.—Duties are to be levied on rum and all other spirits, without distinction as to place of manufacture or origin, consumed in the colony.

Stamps.—Stamp duties are imposed on affidavit declarations, agreements, articles of clerkship, cheques, bills of exchange, promissory notes, bills of lading, charter-parties, conveyances, deeds, leases, licenses, and receipts.

Death Duties.—Legacy duties at the following rates are payable: Child or descendant of a child or father or mother or any lineal ancestor of deceased, half of 1 per cent.; brother or sister or any descendant, $1\frac{1}{2}$ per cent.; uncles or aunts, $2\frac{1}{2}$ per cent.; strangers, 5 per cent. Succession duties are also imposed. The existing death duties are subject to any provision in a subsequent Ordinance to be passed substituting in their place One Stamp Duty.

License Duties.—License duties are imposed in respect of banking, insurance, and various other businesses and trades, and upon carriages, dogs, fire-arms, hotels, taverns, and other place of public entertainment.

Customs.—No. 4. The Customs Duties Ordinance, 1897, subjects all imported goods, whether British or foreign, to one and the same tariff of import duties.

Extradition.—No. 8. The Extradition Ordinance (British Guiana), 1897, provides that all powers vested in the police magistrates and justices of the peace in the United Kingdom under the Imperial Extradition Acts of 1870 and 1873 are to be exerciseable by the stipendiary magistrates in British Guiana for the surrender of fugitive criminals. This Ordinance is not to be operative until Her Majesty, by Order in Council, gives effect to it as part of the Imperial Extradition Act of 1870.

Legal Practitioners.—No. 18. The Legal Practitioners Regulation Ordinance, 1897, requires the Registrar to keep in the Roll of the court the names of all persons entitled to practise as barristers or solicitors. The court can admit to practise as barristers members of the English, Scotch, and Irish

[1] The Session 60 Vict. ended December 31st, 1897.

Bars; and as solicitors persons admitted as solicitors in the United Kingdom, including writers to the signet and articled clerks after five years' service who pass the examination. All persons so admitted must be enrolled on the Roll of the court, and solicitors are to be deemed officers of the court, and barristers who practise as solicitors in so far as they so practise are to be deemed solicitors.

5. BRITISH HONDURAS.

[*Contributed by* H. L. Ormsby, Esq.]

Ordinances passed—45.

Ancient Monuments.—Ordinance No. 5, 1897 (the Ancient Monuments' Protection Ordinance, 1897).

S. 2 defines "Ancient Monument" as any building, tomb, obelisk, or construction which existed before 1700 A.D.; "Relic" as any carved stone, any jewel, and any manufactured thing, whether of stone, pottery, metal, or other substance, which may hereafter be found in the colony, and which existed in the year 1700 A.D.; and "Mound" as any mound or excavation in which any relic may be hereafter found.

S. 3 makes it an offence against the Ordinance to injure any ancient monument, to injure or remove any relic, or to disturb any mound.

S. 4 gives power to the Governor in Council to make regulations for the purposes of the Act, and for rewarding the discoverers of ancient monuments, relics, or mounds.

S. 5 empowers landowners and Crown lessees to give notice of the existence of ancient monuments, etc., on their lands, and either to give such monuments, etc., to the colony or to remain possessed of them.

S. 6 vests the property in monument, belonging to the colony, in the Governor.

S. 7 provides for expenditure in excavations, etc.

S. 8 imposes penalties for offences against the Ordinance not exceeding twenty-five dollars' fine or one year's imprisonment with or without hard labour.

Summary Jurisdiction: Married Women.—Ordinance No. 6, 1897 (the Summary Jurisdiction [Married Women] Ordinance, 1897), is, with certain slight variations, necessary to adapt it to Colonial circumstances, a reproduction of the Imperial Act, 58 & 59 Vict., c. 39 (the Summary Jurisdiction [Married Women] Act, 1895).

Ordinance No. 7, 1897 (the Prisons' Officers' Reward Fund Ordinance, 1897), appropriates fines on prisons' officers to a Prisons' Officers' Reward Fund.

Summary Jurisdiction: Fees.—Ordinance No. 9, 1897,[1] gives Courts of Summary Jurisdiction power to remit fees on the ground of poverty or other reasonable cause.

Customs Duties.—Ordinance No. 12, 1897 (the Tariff Amendment Ordinance, 1897), alters the duties on beef, pork, and flour, and admits asbestos, paint, carts for use in logwood works, chica, and iron framework and girders duty free.

Ordinance No. 16 fixes the duty on still wines at fifty cents. per gallon.

Ordinance No. 14, 1897 (the Constitution of Boards of Health Ordinance, 1897), deals with the appointment of District Boards to the Local Boards of Health.

Insurance.—Ordinance No. 15, 1897 (the Insurance Ordinance, 1897), gives power to the Governor to require security from persons or companies carrying on the business of insurance (other than fire or marine), and imposes a penalty of five hundred dollars for persons carrying on business after notice without having given security.

S. 8 suspends the Ordinance until proclamation by the Governor that it is Her Majesty's pleasure not to disallow the same.

Harbour.—Ordinance No. 18, 1897 (the Public Wharfs and Sea Walls Protection Ordinance, 1897), gives power to the Governor in Council to make regulations for the purposes of the Act, or to empower District Boards to make the like regulations.

Public Health.—Ordinance No. 19, 1897,[1] amends the Public Health Ordinance, 1894, in certain matters of detail.

Local Taxation.—Ordinance No. 28, 1897 (the District Boards Local Taxation Ordinance, 1897), transfers the power of fixing the annual rate of land tax on town lands to District Boards, and directs all persons in possession of land to give in returns of their lands, etc., in the prescribed form.

Public Officer.—Ordinance No. 27, 1897, amends the scale of travelling allowances to the Governor and other officers.

Licenses.—Ordinance No. 21 amends Ordinance No. 10 of 1894 as to licenses for horses, asses, carts, drays, and carriages; imposes a scale on license duties on traders (5, 10, or 20 per cent. on annual value of shops, etc.), billiard-room keepers (25 dols. per table), commercial travellers (5 dols.), solicitors (50 dols.), general contractors (25 dols.), stevedores (5 dols.), and tailors (10 dols. if 4 or 5 assistants, 20 dols. if over 5 assistants).

Ordinance No. 33, 1897, directs persons liable to license duty on dogs, horses, carriages, etc., to make returns under penalties of ten dollars for default and twenty dollars for a false return.

Volunteer.—Ordinance No. 38, 1897 (the Volunteer Ordinance, 1897), empowers the Governor to organise a volunteer force, and to make regulations therefor (s. 5), and to appoint officers and instructors (ss. 7, 8). It

[1] No short title.

applies the regulations of the Secretary of State for the volunteer force in England (s. 6).

S. 9 provides that officers shall be British subjects, and s. 10 that they and all volunteers shall take the oath of allegiance.

SS. 3 and 14 provide for an enrolment for a term of three years certain.

S. 17 provides that the standard of efficiency shall be similar to that prescribed in England.

S. 18 gives power to the Governor to disband any corps or discontinue the service of any volunteers.

SS. 19 and 20 deal with courts-martial, and s. 21 with courts of enquiry.

SS. 22 to 25 deal with the calling-out of volunteers for actual military service, and their payment under these circumstances.

SS. 26 and 27 direct that provision shall be made for the families of officers and volunteers killed, dying, or permanently disabled in actual military service.

SS. 28 to 30 deal with discipline.

S. 31 gives to corps the power to make regulations subject to the approval of the Governor.

S. 32 vests the property of corps in the commanding officer *ex-officio*.

S. 33 provides for the recovery of subscriptions and fines.

SS. 34 and 39 are for the protection of public or corps property, and butts, targets, etc.

S. 40 deals with obstructing volunteers at drill, etc.

S. 41 deals with the application of penalties.

SS. 42 to 55 deal with the taking of lands, the fixing of compensation, costs of enquiries, etc.

SS. 55 to 57 deal with impressment of boats, men, horses, and compulsory service of merchant seamen, and the compensation to be paid therefor.

Cattle.—Ordinance No. 43, 1897, gives power to District Boards, with the approval of the Governor in Council, to define "prohibited areas" in which the tethering of cattle in streets or permitting them to stray is punishable with a fine not exceeding twenty-five dollars. It also provides for the pounding of cattle found in streets in prohibited areas, and gives power to District Boards to make regulations.

Fire.—Ordinance No. 44, 1897 (the Fire Brigade Ordinance, 1897), establishes and provides for the regulation of a fire brigade in the town of Belize; gives power to levy a rate, and provides for the inspection of houses, chimneys, etc., and prohibits unprotected lights in the town and on shipping lying at wharfs, etc.

Crown Lands.—Ordinance No. 45, 1897, regulates the sale of town and suburban lands.

6. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ.]

Number of Laws—39.

Of the Acts passed in 1897 some are of a purely local character: some correct errors in previous legislation: and one relating to larceny of prædial products has not been sanctioned.

Juvenile Offenders.—Law No. 2 amends the Juvenile Offenders Act of 1896 by reducing the maximum number of strokes where whipping is allowed. The Act of 1896 fixed the maximum at thirty-six. It is now reduced to six for a child between ten and twelve, and twelve for a child between twelve and sixteen.

Explosives.—The manufacture of gunpowder and other explosives is prohibited except under license of the Governor. The provisions of the Act with respect to licenses are meagre. The whole machinery is left to be provided by rules and regulations (Law No. 4).

Finance Act.—S. 20 of the Finance Act, 1894, is applied to the island by Law 6.

Lepers.—The Leper Asylum Law of 1896 is amended so as to make provision for the reception and detention of lunatic lepers at the Lepers' Home, Spanish Town (Law 9).

Bar Regulation.—The necessity of extreme care in dealing with figures in Parliamentary Bills is exemplified by Law 10. By the Jamaica Bar Regulation Act, 1896, Law 37 of 1872 was repealed *per incuriam*. The intention was to repeal Law 36, an Act relating to Bar regulation. Law 37 related to slaughter-houses.

Indian Immigrants.—The re-patriation of Indian immigrants is the subject-matter of Law 12. An immigrant who has completed ten years' residence in the island is entitled to a passage home on payment of one-fourth of the passage money.

Telephones.—The Military Telephone Law (No. 14) saves and declares the right of the Governor to authorise the military authorities to lay telephone lines along the roads, without any annexed obligation of establishing or keeping a telephone exchange.

Bicycles.—The Road Law (No. 18) makes regulations for bicycles, as respects lamps and bells, and provides that all such machines are to be deemed carriages for the purposes of the laws relating to road traffic.

Pounds.—Law 19 is a general law relating to pounds and impounded animals.

Tramways.—The law of tramways is amended by Law 22. By the law of 1895 the term for a tramway undertaking is such number not less than twenty nor more than thirty years as the Governor in Council determines.

The life of an undertaking may be prolonged for further terms of twenty years. The new law provides, *inter alia*, that if such extension is refused the Government must purchase the plant. The language, which may be compared with the much litigated section of the English Act of 1870, is as follows: "The Government shall purchase the tramway lands, buildings, tracks, machinery, plant and materials belonging to the licensees and used by them for the purposes of their undertaking at their fair value at the time of such purchase." The criterion of fair value is laid down in a subsequent section; and here the language of the Electric Lighting Act, 1888 (51 & 52 Vict., c. 12), has been adopted in preference to that of the Tramways Act 1870.

Public Health Commissioners.—A new board called the Kingston General Commissioners is constituted by Law 24. It takes over the duties of several boards from time to time created in relation to water, gas, markets and improvements.

The Kingston Improvement Amendments Law (No. 28) discloses the fact that the Kingston Commissioners are armed with much stronger powers than English local authorities under the Public Health Act. All closets and "house-sewers" (that is branch drains, pipes, and accessories) are under the control and supervision of the Commissioners; they may require closets to be provided and regulate their material and construction; they may enter and inspect houses at any time.

No person is allowed to do any closet or sewer work unless he is licensed. Persons so licensed are, in the Act, somewhat elliptically termed "licensed sanitary constructors."

Marriage.—The law of civil marriage is consolidated by Law 25.

Lands Acquisition.—The Public Lands Acquisition Law (No. 31), extends the "Lands clauses" legislation. As elsewhere in the Colonies, lands may be taken for public purposes, without special Act, by proclamation made by the Governor, or the War Department or the Admiralty.

A betterment clause (s. 7) is inserted in the following terms: "In estimating the amount of compensation to be paid, the valuing authority shall estimate the advantage as well as the disadvantage accruing to the adjoining land, if any, of the claimant for compensation, in respect of the public work, . . . and if in the opinion of the valuing authority the value of such advantage exceeds the value of the land acquired or more than compensates for any damage suffered by the claimant the amount of the price of compensation awarded shall be nominal."

Law Officers.—By the Law Officers Law (No. 32) the office of assistant to the Attorney-General is abolished, and the office of Solicitor-General is created. The Solicitor-General gets £500 a year, but is allowed to take private practice in civil matters: the Attorney-General has £1500 a year.

Tobacco.—An excise duty is levied on makers of cigars and cigarettes. The license duty is 10*s.* up to 20,000 cigars, 20*s.* beyond that number, and 5*s.* for making cigarettes only.

7. TRINIDAD AND TOBAGO.[1]

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances—24 (1897).

Crown Lands.—No. 2. This Ordinance, consolidated with Ordinance No. 13 of 1852, and together cited as the "Powers and Duties of Wardens Ordinances, 1852 and 1897," enables the wardens of Crown lands and persons authorised by them to seize and detain any timber, lumber, or other vegetable product taken without license from any Crown lands, and provides for the punishment of persons convicted of taking such timber, etc., without license.

Public Survey.—No. 6. The Trinidad Survey Ordinance, 1897, confers upon the surveyors appointed by the Governor the necessary powers to enter all lands for the purpose of surveying, ascertaining, and marking out the reported public boundaries of any ward union, ward county, or district.

Legal Practitioners.—No. 7. The Solicitors (Amendment) Ordinance, 1897, amends and is to be read with the Solicitors Ordinance, 1896. It enacts that barristers admitted to practise in Trinidad, if resident and actually practising in Tobago, may be admitted to practise as solicitors in Tobago.

Immigration.—No. 10. The Immigrants Regulation Ordinance, 1897, permits the landing in the colony of persons who have been rescued from any ship and not brought from any other British possession, and of foreign seamen and stowaways, on the consul of the country to which such foreign seamen or stowaways belong undertaking to maintain them until they can be re-shipped.

Patent.—No. 11. The Patents' Designs and Trademarks Ordinance, 1897, amends and is to be read as one with a like Ordinance of 1894, referred to as the Principal Ordinance. On application for a patent the specifications and drawings submitted are not to be made public before the patent is granted. Interim protection for nine months enabling the use of an invention is to be given, and inventors are to be able to disclaim any part of the title of the invention or of the specification.

Designs.—The author of any new design is to be deemed the proprietor thereof, unless he executed the work for good or valuable consideration for another person, in which case such other person shall be deemed the proprietor. No person during the existence of a copyright in any design shall use the same, or any imitation thereof, as a trademark without the consent of the proprietor of such design, under a penalty not exceeding £50.

[1] There is no annual Session of the Legislature. The first Monday in every month except January is fixed as a day of session. Private and public Ordinances are numbered together by reference to the calendar year.

Trademarks.—Trademarks must consist of, or contain at least one of, the following essential particulars:—

(*a*) A name of an individual or firm in some particular manner.
(*b*) A written signature, or copy of a written signature, of the applicant, for registration thereof as a trademark.
(*c*) A distinctive device, etc.
(*d*) An invented word; or
(*e*) A word having no reference to the character or quality of the goods and not being a geographical name.

Provisions for the removal of trademarks from, and the entry of assignments upon, and the inspection of the register, are contained in the Ordinance.

Immigrants.—No. 12. The Immigration Ordinance, 1896, is the title of Ordinance No. 12, 1897. It is the amendment and consolidation into one Ordinance of the Ordinances regarding immigration. This consolidating Ordinance is divided into sixteen parts, under the following titles: (1) The Immigration Department; (2) Fiscal Provisions; (3) Arrival and Allotment; (4) Indenture; (5) Dwellings; (6) Rations; (7) Hospitals; (8) Labour and Wages; (9) Leave and Desertion; (10) Marriage, Divorce, etc.; (11) Transfer and Determination of Indentures; (12) Certificates of Exemption from Labour; (13) Passport and Return Passages; (14) Registers, Returns, and Certificates; (15) Procedure; (16) Miscellaneous Provisions.

This Ordinance contains 283 sections and schedules of forms, etc., and of the previous enactments wholly repealed.

[By Ordinance No. 14, 1897, this Ordinance was suspended until the end of 1897.]

Press.—No. 13. The Newspaper Ordinance, 1897, is to be read as one with the like Ordinance of 1894 referred to as the Principal Ordinance. It requires the execution of fresh bonds in the case of discharged sureties, etc., before the printing or publication of any newspaper under penalties for non-compliance, and the publication on each paper of the name and address of the printer.

Military.—No. 19. The Local Forces Ordinance, 1897, provides that the police shall be a semi-military force for the defence of the colony against external aggression, to be called out for actual military service by the Governor in case of apprehended or actual invasion or civil insurrection.

Criminal: Summary Convictions.—No. 20. The Summary Convictions' Offences (Procedure) Ordinance, 1897, empowers the issue of summons for appearance forthwith of any defendant who is likely to leave the colony. Witnesses are to be out of court. Periods of imprisonment may be cumulative. Aiders and abettors are to be liable to same punishment as the principal offender. The schedule contains a list of indictable offences for which adults may be summarily tried.

No. 24. The Immigration (Amendment) Ordinance, 1897, is to be read as one with the preceding Ordinance, No. 12, which is subjected to various and many amendments contained in fifty sections.

8. WINDWARD ISLANDS.

(i) GRENADA.[1]

[*Contributed by* H. L. Ormsby, Esq.]

Ordinances—35.

Evidence: Consolidating Act.

Ordinance No. 1 of 1897 (the Evidence Ordinance, 1897) is an enactment consolidating the whole law of evidence. It is divided into three parts: Part I. dealing with "Relevancy of Facts"; Part II. with Proof; and Part III. with "Production and Effect of Evidence."

(*a*) **Relevancy of Facts.**—Part I. contains chap. i. (ss. 1-4), Preliminary; chap. ii. (ss. 5-16), on the Relevancy of Facts, (ss. 17-31) Admissions and Confessions, (ss. 32, 33) Statements by Persons who cannot be called as Witnesses, (ss. 34-38) Statements made under Special Circumstances, (s. 39) How much of a Statement is to be Proved, (ss. 40-44) Judgments of Courts of Justice when Relevant, (ss. 45-51) Opinions of Third Persons when Relevant, (ss. 52-55) Character when Relevant.

(*b*) **Oral and Documentary Evidence, etc.**—Part II. contains chap. iii. (ss. 56-58), Facts which Need not be Proved; chap. iv. (ss. 59, 60), of Oral Evidence; chap. v. (ss. 61-73), of Documentary Evidence, (ss. 74-78) Public Documents, (ss. 79-90) Presumptions as to Documents; and chap. vi. (ss. 91-100), of the Exclusion of Oral by Documentary Evidence.

(*c*) **Burden of Proof, Witnesses, etc.**—Part III. contains chap. vii. (ss. 101-114), of the Burden of Proof; chap. viii. (ss. 115-117), Estopped; chap. ix. (ss. 118-135), of Witnesses; chap. x. (ss. 136-167), of the Examination of Witnesses; and chap. xi. of Improper Admission or Rejection of Evidence.

The Enactments generally are in accordance with the law of England.

(*d*) "**Illustrations.**"—One peculiarity (apparently borrowed from the Indian Penal Code) of the Ordinance is the use of "Illustrations"—*i.e.*, explanatory instances, to make the meaning of the enactment clearer, *e.g.* under the definition of "fact," as

(i) "Any thing, state of things, or relation of things capable of being perceived by the senses."

(ii) "Any mental condition of which any person is conscious" follows *Illustrations*:—

(*a*) "That there are certain objects arranged in a certain order in a certain place is a fact."

(*b*) "That a man heard or saw something is a fact," and so on.

[1] The Session terminated December 1st, 1897.

Occasionally these illustrations can hardly be called happy, as for instance :—

"The question is whether A robbed B. The facts that shortly before the robbery B went to a fair with money in his possession, and that he showed it, *or mentioned the fact that he had it, to third persons*, are relevant."

(*e*) **Points of Variation from English Law.**—The Ordinance principally varies from English law in the following manner :—

(i) *Confessions.*—S. 25. "No confession made to a police officer other than the Chief of Police by a person accused of any offence shall be proved as against that person."

S. 30. "Where more persons than one are being jointly tried for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration the confession as against the other person, as well as against the person who makes the confession (this appears to be contrary to the most elementary notion of the law of evidence)."

(ii) *Statement of Deceased Persons.*—S. 32 (i) makes a statement, written or verbal, of a deceased person, itself a relevant fact, as to the cause of his death, whether such person was under expectation of death or not.

(iii) *Statements by Absent Persons.*—(viii) makes the statement of persons either dead or who cannot be found *or whose attendance* cannot be procured without an amount of delay or expense which appears to the Court unreasonable relevant facts, when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustration :—

"A sues B for a libel expressed in a printed caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character."

The remarks of a crowd of spectators on those may be proved.

(iv) *Books of Account.*—S. 34 makes books of account evidence against the person charged therein, but not sufficient if alone.

(v) *Maps and Charts.*—S. 36 makes maps or charts *usually offered for public sale* evidence.

(vi) *Proof of Foreign Law.*—S. 38 allows foreign law to be proved by law books published under the authority of the Government of the country, and makes foreign law reports relevant.

(vii) *Opinions of Experts.*—S. 60 allows the opinions of experts to be proved by treatises commonly offered for sale written by them, when the author is dead, etc.

(*f*) **Rape: Boy under Thirteen.**—By s. 113 a boy under *thirteen* is presumed incapable of committing rape.

(*g*) **Evidence of Accused Persons.**—By s. 120 (2) and (3) persons accused, and their wives or husbands are competent, but not compellable, witnesses in case of ordinary assault, rape, abduction, and similar offences, whilst in other criminal causes the wife or husband of the accused is a competent witness for the defence.

(*h*) **Witness: Criminating Questions.**—S. 132 enacts that a witness is not excused from answering questions on ground that the answer will criminate him, but provides that his answer shall not subject him to arrest or prosecution.

Criminal Code.

(*a*) **Divisions of Subject Matter.**—Ordinance No. 2 of 1897, "The Criminal Code," is divided into three books and nine parts.

Book I. General Provisions contains: Part I. Introductory Provisions (title i. Preliminary Matters, ss. 1-11); Part II. General and Special Rules of Criminal Law (title ii. General Explanations, ss. 12-18; title iii. Special Explanations relating to Certain Offences, ss. 19-41; title iv. Attempts to Commit Crimes, ss. 42, 43; title v. Abetment and Conspiracy, ss. 44-48; title vi. General Exemptions, ss. 49-53; and title vii. Justifiable Force and Harm, ss. 54-70); and Part III. Punishments (title viii. Different Kinds of Punishment, ss. 71-82).

Book II. Summary Offences contains: Part IV. Offences against the Person (title ix. Assaults, ss. 83, 84); Part V. Offences against the Rights of Property (title x. Mischief to Property, ss. 85-96; title xi. Misappropriations and Frauds, Stealing, ss. 97-99; False Pretences and Frauds, ss. 100, 101; Receiving, s. 102; Unlawful Possession, ss. 103-107; title vii. Forgery and False Coin, ss. 108-113); and Part VI. Offences against Public Order, Health, and Morality (title xiii. Public Nuisances—Gaming-house, ss. 114-117; Drumming and Firing Guns, etc., ss. 118, 119; Pigs, s. 120; Diseased and Stray Cattle, Mad Dogs, etc., ss. 121-126; Selling Unwholesome Meat, s. 127; Fouling Water, ss. 128, 129; Drunken, Riotous, and Disorderly Conduct, ss. 130-139; Illegal Fishing-nets, ss. 140, 141; Nuisances and Obstructions in the Streets, and the like, s. 142; Driving Cart, etc., ss. 143-146; Trading on Sunday, ss. 147, 148; Idle and Disorderly Persons, ss. 149, 150; title xiv. Miscellaneous Offences and Matters, Cruelty to Animals, ss. 151-157; Practising Obeah, ss. 158-160; Use of Fire, ss. 161, 162; Trespassing and Detention of Goods, ss. 163-166; Miscellaneous, ss. 167-188).

Book III. Indictable Offences contains: Part VII. Offences against the Person and Reputation (title xv. Assault and Similar Offences, Assault, ss. 189, 190; Rape and Similar Offences, ss. 191-197; Kidnapping, Abduction, and Similar Offences, ss. 198-207; Definitions and Special Provisions, ss. 208-

218; title xvi. Criminal Harm to the Person, ss. 219-243; title xvii. Criminal Homicide and Similar Offences, ss. 244-265; title xviii. Libel, ss. 266-273); Part VIII. Offences against Rights of Property (title xix. Mischief to Property—Arson, ss. 274-278; Other Criminal Mischief, ss. 279-285; Definitions and Special Provisions, ss. 286, 287; title xx. Misappropriation and Frauds, Stealing, Robbery, and Extortion, ss. 288-291; Fraudulent Breach of Trust, s. 292; False Pretences and Other Frauds, ss. 293-300; Receiving, s. 301; Definitions and Special Provisions, ss. 302-306; title xxi. Housebreaking and Burglary, ss. 307-313; title xxii. Forgery and False Coin, ss. 314-334); and Part IX. Offences against Public Order, Health, and Morality (title xxiii. Offences against the Safety of the State, ss. 335-351; title xxiv. Offences against the Public Peace, ss. 352-371; title xxv. Perjury and Obstruction of Public Justice, Perjury and Similar Offences, ss. 372-388; Rescue Escape, Compounding Crime, etc., ss. 389-397; Definitions and Special Provisions, ss. 398-401; title xxvi. Offences relating to Public Offices and Public Elections, ss. 402-429; title xxvii. Bigamy and Similar Offences, ss. 430-439; title xxviii. Public Nuisances, ss. 440-450).

(*b*) **Attempts in First and Second Degree.**—The chief points worthy of notice are the following:—s. 42 distinguishes between attempts in the first and second degrees, attempts in the first degree being such as are frustrated by circumstances independent of the will of the criminal.

(*c*) **Juvenile Offenders: Whipping.**—SS. 76, 79. Juvenile offenders—*i.e.*, children between seven and sixteen—are to be whipped in cases where flogging is prescribed, and may be whipped in cases in which fine or imprisonment is prescribed.

(*d*) **Forced Marriages.**—S. 205. Whoever compels any person to marry against his or her will is liable to imprisonment for two years.

(*e*) **Robbery with Arms.**—S. 290. Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment for fifteen years, and in the discretion of the judge to flogging.

(*f*) **Fraudulent Actions.**—S. 380. Whoever fraudulently brings any action against another person in a false or fictitious name, having no ground for such action, is guilty of misdemeanour.

(*g*) **Disobedience to Subpœna.**—By s. 382 disobedience to a subpœna is made a misdemeanour.

(*h*) **Compounding a Misdemeanour.**—By s. 397 compounding a misdemeanour is punishable by imprisonment for six months.

Code of Criminal Procedure.

Ordinance No. 3 of 1897 (the Code of Criminal Procedure) is divided into three books and seven parts.

(*a*) **General Provisions.**—Book I. General Provisions contains: Part I. Miscellaneous Provisions (title i. Preliminary and Miscellaneous Matters

ss. 3, 4; title ii. Statement of Ownership, ss. 5-9; title iii. Arrest, ss. 10-16; title iv. Search Warrant and Seizure, and Restitution of Property, ss. 17-22; title v. Keeping of the Peace, ss. 23, 24; title vi. Witnesses, ss. 25-33; title vii. Payments of Costs and Compensation, ss. 34, 35; title viii. Enforcement of Order, ss. 36-50; title ix. Enforcement of Recognisance, s. 51; title x. Bail, ss. 52-61; title xi. Miscellaneous Matters, ss. 62-71).

(*b*) **Summary Offences.**—Book II. Procedure Relating to Summary Offences contains: Part II. Proceedings up to Hearing (title xii. Institution of Proceedings, ss. 72-78); Part III. Hearing and Subsequent Proceedings (title xiii. Hearing and Order, ss. 79-90; title xiv. Miscellaneous Matters, ss. 91-93*a*).

(*c*) **Indictable Offences.**—Book III. Procedure relating to Indictable Offences contains: Part IV. Preliminary Inquiry before a Magistrate (title xv. Proceedings up to Committal, ss. 94-110; title xvi. Proceedings subsequent to Committal, ss. 111-115); Part V. Trial in the Supreme Court (title xvii. Mode of Trial, ss. 116, 117; Pleading, ss. 118-137; title xviii. Proceedings Preliminary to Trial, ss. 138-140; title xix. Trial, ss. 141-172); Part VI. Capital Punishment (title xx. Procedure relating to Capital Punishment, ss. 173-187); Part VII. Miscellaneous Provisions (title xxi. Miscellaneous Matters, ss. 188-191).

(*d*) **Similarity to English Procedure.**—The Procedure under this Ordinance is practically in accordance with that in force in England.

Prescription.—Ordinance No. 4 of 1897 (the Prescription Ordinance, 1897) fixes the following term of prescription:—

Easements, rights to light and air, profits, and benefits, twenty years.

Friendly Societies.—Ordinance No. 6 of 1897 (the Friendly Societies Ordinance, 1897) includes in its operation loan societies, building societies, and co-operative societies, and omits cattle insurance societies; otherwise it is very similar in effect to the Imperial Statute 59 & 60 Vict., c. 2, the Friendly Societies Act, 1896.

Notary Public.—Ordinance No. 11 of 1897 (the Notaries Public Ordinance, 1897) empowers the Governor to grant licenses to notaries public, and regulates the duties and status of these practitioners.

Forms of Oaths.—Ordinance No. 13 of 1897 (the Oaths Ordinance, 1897) provides forms of oaths, oath of allegiance, official oath, judicial oath, oath of executive councillor, oath of clerk of executive council, oaths of juror, witnesses, and interpreters, and form of affirmation; permits the Scotch form, and regulates oaths generally in accordance with the law of England. By s. 31, if on a criminal trial the interpreter is incompetent, the judge is to discharge the jury, and the accused is liable to be tried again.

Trustees.—Ordinance No. 14 of 1897 (the Trustee Ordinance, 1897) is practically a reproduction of the Imperial Statute 56 & 57 Vict., c. 53 (the Trustee Act, 1893), with unimportant variations, such as permitting investments in securities of the colony, and the omission of some sections not required for the purposes of the colony.

Limitation of Time for Actions.—Ordinance No. 15 of 1897 (the Limitation of Actions Ordinance, 1897) fixes the terms of limitation as follows:—

Claim of Crown to lands, 60 years.
Claim to land or rent, 12 years.
In the case of corporations sole, 2 incumbencies and 6 years or 60 years.
Arrears of dower or rent, 6 years.
Personal estate of intestate, 20 years.
Action for injury to real estate of deceased, 1 year.
Action for injury to property by deceased, 6 months from administration.
Trespass to the person, or malicious prosecution, 4 years.
Other trespasses and debt, 6 years.
Accounting and accounts merchant, 6 years.
Person under disability, 30 years.

The Ordinance also contains other provisions in accordance with the Law of England.

Conveyancing and Law of Property.—Ordinance No. 16 of 1897 (the Conveyancing and Law of Property Ordinance, 1897) is practically a reproduction of part of the Imperial Statute 44 & 45 Vict., c. 41 (the Conveyancing Act, 1881)—viz., ss. 6, 7, 15–29, 49–52, 54, 56, 58–63, 67, 70.

Contracts.—Ordinance No. 21 of 1897 (the Law of Real and Personal Property Ordinance, 1897) follows the law of England as contained in the Statute of Frauds, as to the contracts of infants, as to guarantees, as to the liability of real estate to answer the debts of a deceased person, and the restriction of accumulations, and extends escheat to incorporeal hereditaments and to equitable interests.

Immigration.—Ordinance No. 23 of 1897 (the Infirm Paupers and Immigrants Regulation Ordinance, 1897) is practically identical with the legislation on the same subject passed by other West Indian Colonies—*e.g.*, Antigua in 1895 and 1896.

Libel and Slander.—Ordinance No. 25 of 1897 (the Libel and Slander Amendment Ordinance, 1897) reproduces the Imperial enactments 6 & 7 Vict., c. 96, ss. 1, 2, 44 & 45 Vict., c. 60, ss. 4, 5, and 54 & 55 Vict., c. 51.

(ii) ST. VINCENT.

[*Contributed by* H. L. Ormsby, Esq.]

Ordinances—27.

Excise.—Ordinance No. 3 of 1897 (the Amending Excise Ordinance, 1897) provides (s. 4) for the registration of unregistered stills.

S. 5 prohibits the importation of stills of less capacity than one hundred gallons without written notice.

SS. 6 and 7 impose a penalty not exceeding one year's imprisonment,

with or without hard labour, for distilling with an unregistered still or selling or being found in possession of spirits so distilled, and place the onus of proof as to guilty knowledge on the accused.

S. 8 makes the possession of liquor used for distillation or appliances for that purpose an offence, if the accused does not show that they were in his possession for lawful purposes.

S. 10 makes the accused and his or her husband or wife competent, but not compellable, witnesses.

Master and Servant.—Ordinance No. 4 of 1897 (the Daily Labourers' Wages' Payment Ordinance, 1897) defines (s. 3) "Daily Labourer," "Employés," and "Wages."

SS. 4 and 5 provide for payment of wages at intervals of fourteen days, at least, and in coin, or in notes on licensed banks, or with consent of the labourer in drafts on these banks.

S. 6 prohibits set off for goods supplied (except medicine) in an action for wages.

SS. 7 and 8 make payment of wages contrary to the time or manner provided an offence, and make payments contrary to the manner provided void.

S. 10 imposes a penalty not exceeding £10, or imprisonment not exceeding three months, with or without hard labour, in default of payment.

Trustee.—Ordinance No. 6 of 1897 (the Trustee Ordinance, 1897) is with certain variations required by Colonial circumstances a reproduction of the Imperial Trustee Act, 1893 (56 & 57 Vict., c. 53).

Savings Bank.—Ordinance No. 7 of 1897 (the Savings Banks Ordinance, 1897) consolidates the law relating to the Government Savings Bank, and provides for the establishment of district savings banks (ss. 27-29), which are to be branches of the Savings Bank.

S. 10 fixes interest at 2½ per cent., and s. 11 limits deposits to £200, of which only £100 bears interest.

S. 30 gives power to the Governor in Council to make rules for the conduct of savings banks.

Land Credit.—Ordinance No. 8 of 1897 (the Land Credit Ordinance, 1897) provides that the colony may guarantee three per cent. interest on £150,000, loans advanced by companies or banks named in a proclamation to planters and others concerned in agriculture.

S. 5 limits the interest on these loans to six per cent.

S. 17 requires that before the Colonial guarantee is given the conditions of the loan are to be approved by the Governor in Council.

S. 29 provides for a land tax of threepence per acre to meet the expenses of any loan for the purposes of the Ordinance.

Charcoal.—Ordinance No. 9 of 1897 (the Charcoal Ordinances Repeal Ordinance, 1897) repeals the Charcoal Ordinances, 1888 to 1892, and pro-

vides that persons making charcoal on the lands of others without permission, or removing charcoal made contrary to the Ordinance, shall be liable to a penalty not exceeding £5, or imprisonment, with or without hard labour, not exceeding three months in default of payment.

Kingstown.—Ordinance No. 11 of 1897 (the Kingstown Board Ordinance, 1897) provides for the local Government of the town of Kingstown.

Immigration.—Ordinance No. 12 of 1897 [1] (the Infirm Paupers and Immigrants Regulation Ordinance, 1897) restricts the landing of infirm paupers and destitute immigrants, and imposes a penalty of £100, secured by maritime lien on vessels landing them, and a penalty not exceeding £50 on the master.

SS. 8 to 11 restrict the immigration of alien and Colonial criminals.

S. 12 gives power to the Governor in Council by proclamation to prohibit the immigration of any criminal or vicious class of immigrants.

SS. 13 to 15 apply the penalties on vessels and masters for landing infirm paupers to the case of immigrants proclaimed under s. 12.

S. 16 imposes a penalty of £50, or imprisonment not exceeding six months, with or without hard labour, in default of payment on proclaimed immigrants landing and on aiders and abettors.

S. 23 gives to the Governor in Council power to make regulations for the purposes of the Act.

Administration.—Ordinance No. 13 of 1897 (the Probate—British and Colonial—Ordinance, 1897) enacts that British probates and letters of administration and confirmation, and those granted by colonies extending similar privileges to St. Vincent, may be sealed in the colony, and gives power to make rules of court in that behalf.

Ordinance No. 16 of 1897 (the Magistrates Ordinance, 1886, Amendment Ordinance, 1897) divides (s. 4) the colony into five police districts, and provides for the sittings of magistrates and their travelling allowances and with the service of processes.

Summary Jurisdiction.—Ordinance No. 17 of 1897 (the Magistrates' Judgments Appeal Act, 1870, Amendment Ordinance, 1897) provides that appeals from the Chief Justice sitting as a magistrate shall be to a Commissioner appointed by the Governor of the Windward Islands.

Income Tax.—Ordinance No. 18 of 1897 (the Income and Land Tax Ordinances Amendment Ordinance, 1897) provides for the following rate of income tax :—

Income.	Tax.
£50, but under £100	20*s.* per £100.
£100, but under £200	30*s.* „ £100.
£200 to £300	40*s.* „ £100.
Above £300	60*s.* „ £100.

[1] See similar Grenada Ordinance, vol. ii., p. 252.

Land Tax.—And the following rates of Land Tax :—

Quantity of Land held in St. Vincent.	Tax.
Up to 20 acres	6*d.* per acre.
Over 20 and up to 50 acres	9*d.* ,,
Over 50 acres	1*s.* ,,
In Grenadines, all lands	3*d.* ,,

Prisoner.—Ordinance No. 20 of 1897 (the Prisoners' Release Ordinance, 1897) provides that the Attorney-General shall within a reasonable time after receipt of the depositions determine whether he will present an indictment or not.

In case the Attorney-General determines not to present an indictment, he may order the release of the prisoner and of the prosecutor or any witnesses committed in default of giving recognisances, and the Registrar shall discharge all recognisances to appear.

License.—Ordinance No. 22 of 1897 (the Purchase of Cocoa and Nutmegs Ordinance, 1897) deals with the issue of licenses to deal in these commodities.

Small Debts.—Ordinance No. 25 of 1897 (the Small Debts Ordinances Amendment Ordinance, 1897) deals with procedure and fees in the Police Court sitting as a Small Debts Court.

Registration of Births, Deaths, and Marriages.—Ordinance No. 26 of 1897 (the Births, Marriages, and Deaths Ordinance, 1897) appoints the Registrar of the Supreme Court to be Registrar-General in numerous matters of procedure, and amends the law as to registration of births, etc.

Coroner, Registration of Births.—Ordinance No. 27 of 1897 (the Infant Mortality Ordinance, 1897) repeals the Infant Mortality Ordinance, 1892, and provides that when an infant dies under the age of one year the person required to report the death of such infant may report to the Registrar of Births, etc., instead of to the Coroner, and that the Registrar shall report to the Coroner in case he is not furnished with a certificate of the cause of death signed by a medical practitioner or duly qualified midwife.

(iii) ST. LUCIA.[1]

[*Contributed by* H. L. Ormsby, Esq.]

Ordinances—7.

Immigration.—Ordinance No. 1 of 1897 (the Immigration Ordinance, 1897) amends the Immigration Ordinance, 1891, by repealing s. 9 thereof, and making new provisions as to the return passages of Indian immigrants.

Bank Holiday.—Ordinance No. 4 of 1897 (the Bank Holidays Ordinance,

[1] The Session ended December 30th, 1897.

1874, Amendment Ordinance, 1897) adds to the schedule of the latter Act (8), "Every Wednesday (not being otherwise a Bank Holiday) from and after the hour of noon."

9. LEEWARD ISLANDS.

ANTIGUA.

[*Contributed by* H. L. Ormsby, Esq.]

Acts passed—18.

Land Tax.—Act No. 1 of 1897. The Land Tax 1892, Amendment Act, 1896, fixes the Land Tax on pasture and uncultivated land at 4*d.* per acre.

Colonial Forces.—Act No. 2 of 1897. The Defence Force Act, 1897, repeals the Acts relating to the Militia Force, and constitutes and regulates a defence force of mounted infantry and infantry. It also provides for capitation grants, fines for offences, etc.

By s. 29 the Governor by proclamation may call out the Defence Force for actual military service in case of invasion, war, or internal emergency.

S. 30 applies the Army Act in such case with certain modifications.

S. 32 provides for pensions and gratuities to persons wounded on actual service.

SS. 35 to 39 deal with contingent compulsory service. If the strength of the force is less than two hundred men, or if the mounted infantry are less than fifty, the Governor may by proclamation declare service compulsory, on which the requisite number of persons shall be ballotted for.

S. 40 provides for annual training. Other sections protect the members of the corps, targets, butts, property, etc.

Plants.—Act No. 4 of 1897. "The Plants Protection Act," 1897, prohibits (s. 2) the introduction of coffee plants and uncured berries from Ceylon, Mauritius, Reunion, Fiji, Southern India, Sumatra, Java, Natal, and places proclaimed.

S. 3 gives power to the Governor with consent of the Executive Council to prohibit the importation of things likely to communicate disease to plants.

Treasury.—Act No. 10 of 1897 reorganises and regulates the Treasury Department of the colony.

Intoxicating Liquor.—Act No. 18 of 1897. The Liquor Licenses Act, 1897, by s. 3, introduces bottle licenses—*i.e.*, off licenses for the sale of intoxicating liquors in any quantity, not less than a reputed quart bottle.

S. 4 authorises importers' licenses—*i.e.*, licenses to sell intoxicated liquor imported by the licenser in quantities not less than five dozen reputed quart bottles, or twenty gallons in the wood, except in the case of rum, where fifty gallons is substituted.

X. MEDITERRANEAN COLONIES.

1. GIBRALTAR.

Ordinances—6.

Merchant Shipping.—No. 3. This Ordinance regulates merchant shipping. By ss. 3 (1) 4 certificates of competency are to be held by officers of ships, such certificates to be granted according to certain grades.

By s. 5 examinations are to be held by examiners appointed by the Governor for awarding such certificates.

SS. 9 and 10 provide for the captain of the port licensing pilots who have passed the Governor's examination and for production of the license to the employer.

S. 11 empowers the Governor to make rules for pilots.

Fortifications and Trespass.—No. 5. This is an Ordinance to prevent unauthorised persons entering batteries, fortifications, or magazines, or trespassing on lands adjacent thereto.

Stolen Property.—No. 6. This amends the law relating to the receipt or possession of stolen property.

2. MALTA.

Ordinances—15.

Drainage.—No. 1. This provides for a comprehensive scheme of drainage for all the thickly inhabited districts of Malta.

Building.—No. 2. This regulates building by requiring copies of building plans to be deposited and in other ways.

Education.—No. 3. This provides for the better control and management of the university and other educational establishments.

Bail.—No. 4. This amends the provisions of the criminal law relating to bail.

Notices by Notaries.—No. 5. This amends Ordinance No. 5 of 1855 and No. 11 of 1865, and provides for notices being given by notaries of acts *inter vivos*, public wills, matrimonial agreements, and acts of endowment; and for registration.

Prisons.—No. 7. This Ordinance consolidates the law as to prisons.

Explosives.—No. 8. This Ordinance regulates the importation, custody, and hawking of petroleum.

The remainder relate to public votes.

3. CYPRUS.

Ordinances—18.

District Courts.—No. 1. This Ordinance amends the law as to the jurisdiction of District Courts.

Criminal Law.—No. 3. This Ordinance amends the criminal law as to examination of witnesses, giving false information, the unlawful possession of property, inducing witnesses to give false or withhold true testimony.

Water Supply.—No. 4. This amends the "Wells Law," 1896.

Prison Discipline.—No. 5. This gives power to take evidence on oath on enquiries into prison offences.

Malicious Injuries to Property.—No. 7. This amends the law as to the above.

Municipal Councils.—No. 8. This amends the "Municipal Council Law," 1885.

Shipping.—No. 10. This exempts certain vessels from paying shipping dues.

Taxation.—No. 11. This varies the incidence of taxation.

Public Works.—No. 13. This establishes a public works loan fund.

Education.—No. 14. This amends the Education Law, 1895.

Irrigation.—No. 15. This provides for the construction of irrigation works.

Wheat Pest.—No. 16. This provides means for preventing the spread of the wheat pest.

Silk Industry.—No. 17. This provides regulation for the encouragement of the silk industry.

Tobacco.—No. 18. This facilitates the cultivation of tobacco.

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NOTES.

It is intended to publish as soon as possible, with the Society's Journal, a map, so coloured as to exhibit the systems of law in operation not only in different parts of the empire, but in foreign countries. A map of this kind—a juridical survey appealing to the eye—will, it is hoped, be of value in showing the variety of co-existing legal systems, and particularly the diversified elements of Anglo-Saxon, Hindoo, Mahommedan, Roman, Dutch, French, and Spanish law which make up the mosaic of administration.

In time it is to be hoped we shall also have an index of Imperial legislation. For the United Kingdom there is the index compiled under the direction of the Statute Law Committee; and the Cape has lately indexed its statute law. But the bulk of Imperial legislation remains unindexed; yet it is only by means of such an index that the comparative method can be carried out or the enquirer can ascertain without a disproportionate amount of trouble how other legislatures have dealt with any given problem of legislation. At present we have the anomaly, already noted in this Journal, of one English-speaking community proposing and adopting enactments in entire ignorance of the fact that similar measures have after trial been abandoned or modified in another. Such an index of Imperial legislation is feasible. It is not necessary that it should be elaborated in the manner of our own statute law index—that is to say, the effect of every section epitomised. It would be enough to show that certain topics—shipping, for instance, advertisements, tramways, explosives—have been dealt with and where, leaving the enquirer to go to the measures themselves for details.

How varied these topics are it needs only a glance at the volume of Imperial legislation, briefly recorded in this number, to realise. One of the most noticeable subjects of legislation is alien immigration. It is becoming increasingly clear that our colonies—and not only our colonies, but all civilised nations—are drawing closer the cordon against free alien immigration. Natal furnishes an instance. It prohibits immigration by a person who cannot write out and sign a scheduled form, or who is a pauper or likely to become one, or is insane or suffering from a loathsome or contagious disease,

or who has within two years been convicted of felony or other infamous crime or misdemeanour "involving moral turpitude," or any prostitute or person living on the prostitution of others. Western Australia has passed an Act in the same terms. Manitoba regulates child immigration promoted by philanthropic societies, and prohibits the importation of indigent, vicious, or diseased children. Canada does the same. The West India Islands, St. Vincent, Trinidad, Tobago, St. Lucia, and Grenada, have all been legislating to protect themselves against the landing of infirm paupers or criminal or vicious immigrants.

The legislation against fetichism in Sierra Leone and the Gold Coast shows that superstition is by no means extinct, nor need we wonder at its tenacity, rooted as it is in centuries of savage life and backed by a sanction the strongest known to man—the mysterious dread of the unseen. How hideous the effects of a belief in witchcraft may be is strikingly illustrated in the article by Mr. H. Stephen on "Judging in Gambia" in the *Nineteenth Century* for November 1898. An offence of pretended witchcraft has now been added to the criminal law of the colony. "But the remedy," says Mr. Stephen, "is not perfectly free from objection, since the Englishman punishes the witch practically for frightening other people, while his fellow villagers consider that he is being punished for the one deadly sin known to the West Coast African. On the other hand, an exotic law is not a very powerful instrument for combating a primeval superstition, which approaches almost to the dignity of a national faith, and, if it contributes to the public peace without cruelty and with a due regard for the feelings of its subjects, may be pardoned for a certain defection from the highest standard of missionary effort."

M. Herbert Speyer contributes an article on the English law of evidence in criminal cases in the *Revue de Droit International*. Not unnaturally M. Speyer finds this branch of our law an "inextricable fouillis" of rules and exceptions, one as arbitrary as another, savouring, too, more of casuistry than of logic or law. His conclusion, on the whole, is that the law on this subject makes up for its defects by its suitability to the English mind; and he is right. The real clue to the labyrinth of our rules of evidence in criminal cases is the jealous regard which English law pays to the liberty of the subject, illustrated in the presumption of innocence with which the law starts.

"Les juristes anglais," says M. Speyer, "ne nient pas l'existence de ces dangers (exclusion de preuves), mais ils estiment que les inconvénients qui on découlent sont largement compensés par les avantages pratiques que nous avons énumerés, par la stabilité que l'application de ces règles imprime a la jurisprudence criminelle, ainsi que par la sentiment de sécurité que crée, dans l'esprit des citoyens, la conviction que leur liberté, leur honneur, et leur

biens sont garantis non seulement par l'integrité des juges, mais aussi par la loi elle-même. Ils soutiennent aussi qu'il n'y a aucune contradiction entre cette partie du droit qui exclut avec tant de rigueur toutes les preuves d'un ordre inferieur, et les règles qui admettent à déposer sans la moindre restriction les témoins les plus suspects : l'interrogatoire prouvera, disent-ils, ci ceux-ci doivent être crus ou non, tandis qu'il est inutile de rechercher la valeur d'éléments qui, à raison de leur nature même, ne peuvent jamais mériter créance."

"The unification of the civil and criminal codes of Switzerland, which has just been accepted by a *referendum*, marks an important reform in the legal procedure of the cantons. Hitherto there has existed a conflicting system of laws embodied in no fewer than twenty-four codes, which will, according to the new scheme, be reduced to one plan, and become the statute book for French, German, and Italian Switzerland. This is a measure which will insure a more effective administration of law throughout the country, and it is presented at a moment the more opportune by reason of the Anarchist troubles with which Switzerland has lately had to deal. It will also remedy a most anomalous condition of things. Some of the cantons have hitherto borrowed from the codes of other cantons; others have modelled their procedure on France, Germany, and Austria, according to circumstances of locality rather than for any other reason. In the French cantons of West Switzerland the *Code Napoléon* has chiefly prevailed, North and East Switzerland having based their laws on the statute-books of Austria, and Ticino partly on the Italian and partly on the French code. This conflict of systems has led to constant difficulties between the cantons, inequalities of sentence, hindrance to extradition, anomalies in the civil courts, and especially to long delays in dealing with cases and criminals. The numbers recorded in the *referendum* gave some 261,000 votes in favour of the reform to some 98,000 against. The question was fought out on the same lines as in most of the Swiss plebiscites, the Federalist party denouncing it as an attack on the sovereignty of the cantons, while the Centralising party, who are generally the progressive element in Switzerland, refused to continue the principle of home rule *à outrance* upheld by the reactionary cantons, such as Uri, Schwyz, Fribourg, and the Valais. The unification of the codes has, however, only been accepted in principle; in its execution many difficulties will have to be dealt with, one of the principal being the question of capital punishment, which some cantons refuse to abolish from their statute book, though these are in a minority."—*Times*.

The agitation in favour of a bankruptcy law for the United States led to the passing of the National Bankruptcy Act of July 1st, 1898.

Commenting on this Act, the Albany Law Journal says:

"As the passing of the Act was an event of very great importance to the

legal and business world, so its operation and all matters pertaining thereto are invested with like interest. From the forthcoming report of the Attorney General of the United States, prepared by Mr. E. C. Brandenburg (the attorney in charge of bankruptcy matters in the Department of Justice), it appears the benefits of the Act have been applied for by persons in every walk of life, and that the relief afforded by the Act to that large class of persons who have been unfortunate in their business enterprises has been extensively sought and obtained. It is a significant commentary upon the need of such a law that since it went into effect seventeen hundred petitions in bankruptcy have been filed. In the districts of Delaware, Eastern Pennsylvania, Southern Georgia, Nevada, New Mexico, Western Virginia, and Wyoming, no persons have applied to be adjudged bankrupt."

Mr. Edwin Schuster, barrister-at-law, writes as follows with respect to the law of vaccination in Germany :—

"Compulsory vaccination and re-vaccination exist throughout Germany, pursuant to an Imperial statute (Reichs-Impfgesetz) of April 8th, 1874. The following are the principal provisions of that statute :—

"1. Every child must be vaccinated within one year from its birth, unless it is certified to have had small-pox.

"2. Children attending public and private schools (excepting Sunday schools and evening schools) must be re-vaccinated within the year in which they complete their twelfth year, except in so far as they are certified to have had small-pox or to have been successfully vaccinated within the last five years.

"3. If such vaccination or re-vaccination remains unsuccessful the attempt must be renewed within the next year, and if it is again unsuccessful within the fifth year at the latest.

"4. A postponement of vaccination or re-vaccination is allowed if the person liable thereto is certified to be in a state of health in which vaccination would endanger his health or his life.

"5. Compulsion is applied not only as regards actual vaccination and re-vaccination, but also as regards the duty to pass the result of the vaccination examined in the prescribed manner.

"6. In case of disregard of any of the above-mentioned rules, notice is given to the person concerned to comply with the duty mentioned in such notice. Disobedience to such notice is punishable by a fine not exceeding fifty marks or by imprisonment up to fifty days.

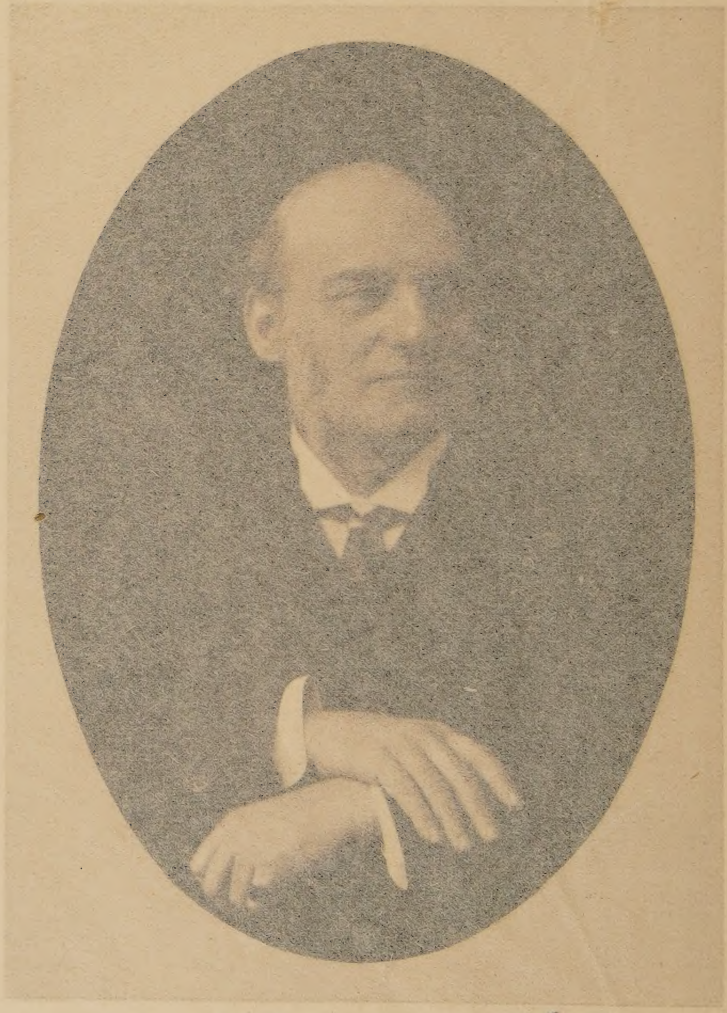
"The question as to the possibility of imposing cumulative punishments in case of continued disobedience has been frequently discussed. The practice of the courts on this subject is not uniform. The better opinion seems to be that cumulative punishments may be imposed."

A writer in the *Jahrbuch der Internationalen Vereinigung für Vergleichende*

Rechtswissenschaft (Dr. Richard Samter), under the title *Schikanefreiheit im Englischen Recht*, comments on the decision of the House of Lords in Allen *v.* Flood. Comparing the English law with the German, Dr. Samter refers to s. 226 of the new code, which prohibits the improper exercise of rights, and to s. 826, which makes the person who injures another liable to pay damages, and adds that none of these sections will be construed in accordance with the English decisions. Dr. Samter thinks that a distinction will always be drawn by German lawyers between the cases in which *animus vicino nocendi* is the motive and those in which conduct is purely self-interested.

The International Union of Criminal Law will hold its general meeting next September at Buda Pesth. The bureau of the Union announces that the following subjects will be discussed :—

1. Détermination de la nature des contraventions (définition, répression, procédure).
   - (*a*) Comme il doit y avoir une différence essentielle entre les infractions appellées "contraventions" et qui ressortissent au droit de police d'une part et d'autre part, les autres infractions qui se rattachent au droit pénal proprement dit, l'Union désire connaître comment cette distinction est réalisée chez nous : (1) en ce qui concerne les principes généraux du droit pénal (notamment la participation, la tentative, la récidive, etc.) ; (2) en ce qui concerne la pénalité ; (3) en ce qui concerne la procédure pénale (instruction preparatoire, etc.) ; (4) en ce qui concerne l'organisation judiciaire (compétences des juges de paix).
   - (*b*) Comme il ne doit pas y avoir de différence essentielle entre ce que la législation pénale appelle "crimes" et ce qu'elle appelle "délits," l'Union désire connaître quelles sont, en pratique, les dispositions de vos lois sur ce point.
   - (*c*) Quelles sont, à votre avis, les reformes qui doivent être apportées au lois existantes sur cette classification.
2. Influence de la vieillesse sur la responsabilité pénale.
3. Protection internationale des mineures contre la traite des blanches.



Herschell C.

Photo by W. D. Downey